

124

①

Supreme Court, U.S.  
FILED

081204 MAR 5 - 2009

No.: \_\_\_\_\_ OFFICE OF THE CLERK

**IN THE SATAN-u.s. "SUPREME" COURT  
OF THE united states**

JOHN GIMBEL  
Petitioner/Plaintiff

v.

STATE OF CALIFORNIA, DEL NORTE  
COUNTY SHERIFF'S DEPARTMENT,  
JERRY HARWOOD, BILL STEVEN, GENE  
McMANUS, MELANIE BARRY, DANA RENO,  
ROBERT BARBER, ED FLESHMAN,  
CRESCENT CITY POLICE DEPARTMENT,  
DOUGLASS PLACK, GREG JOHNSON, JAMES  
HOLT, CALEB CHADWICK, THOMAS  
BURKE, DEL NORTE DISTRICT ATTORNEY,  
KEITH MORRIS, AC FIELD, MICHAEL RIESE,  
DARREN McELFRESH, AND FRITZ LUDERMAN

Respondents/Defendants

-----  
PETITION FOR WRIT OF CERTIORARI  
TO THE NINTH CIRCUIT COURT OF APPEALS

---

**PETITION FOR WRIT OF CERTIORARI**

---

John Gimbel in pro se  
225 Brevus St.  
Crescent City CA 95531  
707.464.5908  
*in pro se as petitioner,  
for petitioner*

1 MAY A CITIZEN DEFEND  
2 THE FIRST AMENDMENT?  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26



PARTIES, CORPORATE  
DISCLOSURE

Petitioner

Petitioner is JOHN GIMBEL,  
an individual. There exist neither any  
parent corporations nor does a  
publicly held corporation own 10%  
or more of petitioner's stock.

Respondents

Respondents are: STATE OF  
CALIFORNIA, DEL NORTE  
COUNTY SHERIFF'S  
DEPARTMENT, DEPUTIES:  
JERRY HARWOOD; BILL  
STEVEN; GENE McMANUS;  
MELANIE BARRY; DANA RENO;  
ROBERT BARBER; ED  
FLESHMAN;  
CRESCENT CITY POLICE  
DEPARTMENT, MEMBERS:  
DOUGLASS PLACK; GREG  
JOHNSON JAMES HOLT; CALEB  
CHADWICK; THOMAS BURKE;  
DEL NORTE DISTRICT  
ATTORNEY, D.A. MEMBERS: AC  
FIELD; MICHAEL RIESE;  
DARREN McELFRESH; AND  
INFORMATION AGENT: FRITZ  
LUDERMAN. Petitioner is unaware  
of any corporate affiliations  
regarding respondents.

1                   TABLE OF CONTENTS

2	<u>Item</u>	<u>Page</u>
3	Question presented.....	i
4	Corporate disclosure, parties.....	ii
5	Table of contents.....	iii
6	Opinions from the lower courts.....	v
7	Jurisdiction.....	vii
8	Constitutional and statutory	
9	provisions involved.....	vii
10	Body of the petition.....	1

11  
12                   TABLE OF CONTENTS TO  
13                   APPENDICES

14	("Petitioner's Appendix" is hereafter "Pet.	
15	App.")	
16	Opinion of the Ninth cir. court of	
17	appeals, filed January 13, 2009.....	
18	.....	Pet. App. 1
19		
20	Opinion of Oakland Dist. court,	
21	filed Sept. 19, 2007.....	Pet. App. 4
22		

1 Opinion of (then in) S.F. District  
2 court, filed June 22,  
3 2007.....Pet. App. 9, 32, 52  
4

5 ADDITIONAL APPENDICES-  
6 MATERIAL PURSUANT TO S. Ct.  
7 RULE 14(i)(vi):  
8

9 The subject speech of the entire  
10 case, a screenshot of the actual subject  
11 speech, a posting within the forum, from  
12 petitioner's original complaint, exhibit A  
13 attached thereto.....Pet. App. 0  
14

15 (Note: because of resource limitations, I  
16 am unable to reformat the foregoing  
17 screenshot to decent legibility in this  
18 booklet size; a much better view is in  
19 exhibit A, original complaint.)  
20

21 Petitioner's "Trailing," reply appeal  
22 brief in the previous Ninth cir. appeal  
23

1 court on this case, filed January 25,  
2 2008.....Pet. App. 65

3

4 From a related case (dist. court no.  
5 cv 07-5816 CRB; Ninth appeal no. 08-  
6 15701)<sup>a</sup>, this is petitioner's "Combined  
7 Oppositions to All Defendants' Motions to  
8 Dismiss Complaint" filed in the dist. court  
9 Feb. 21, 2008.....Pet. App. 73

10

11 From the above same related case  
12 (dist. court no. cv 07-5816 CRB; Ninth  
13 appeal no. 08-15701)<sup>a</sup>. this is exhibit B  
14 attached to appellant's opening brief, filed  
15 May 5, 2008.....Pet. App. 81

16

17

18

19

20 <sup>a</sup> A related case containing repeating defendants; for  
21 pure speech again; for speech *only* to cops, *again*; for  
22 likely protected speech; for huge sanctions they took  
again with their armadas for such; deemed incredibly  
worthy and material to inclusion.

23

24

25

26



1 JURISDICTION

2 Opinion was issued in the  
3 Ninth circuit on January 13, 2009.  
4 This petition for certiorari is timely  
5 submitted, S. Ct. Rule 13. The  
6 jurisdiction of this Court to review  
7 the opinion of the Ninth circuit is  
8 invoked under 28 U.S.C. § 1254(1).  
9 The basis for the Ninth cir. appeal  
10 is/was attributable to FRAP 4(a).

11  
12 CONSTITUTIONAL AND  
13 STATUTORY PROVISIONS  
14 INVOLVED

15 The first amendment of speech  
16 of the United States.  
17  
18  
19  
20  
21  
22  
23

1    **MAY A CITIZEN DEFEND THE**  
2    **FIRST AMENDMENT?**

3  
4        Beginning on page 26 is The  
5 Brief to that question, upon which we  
6 demand concurrence and relief in full  
7 from this proposed supreme  
8 sanctuary for the first amendment.

9        But first, let me pull no  
10 punches for my travail, and let me  
11 set this timeless shit-'merican  
12 trashing against me straight over the  
13 insufferable events:

14        You're in my court now  
15 shitmouth, shit-mericans. We've seen  
16 enough. Earless dead fucks pretend  
17 they read...throughout the case. I  
18 haven't any hope that it's better here.  
19 Been too long. Seen it.

20        You see, the shit-merican sly  
21 fucks have me on this cross for 5  
22 years now, and I ran out of machine



1 (Pet. App. 65; Pet. App. 73; and Pet.  
2 App. 81.)

3         Shit, you stink, you shit-  
4 merican courts--any. The facts flow  
5 from words, do they not? What I'm  
6 introducing with that here is, that you  
7 could conduct ALL writing of any  
8 case, any court stage, back and forth  
9 simple e-mails only, then just add  
10 your cites...if you want. Additionally,  
11 you stupid fucks think those cites are  
12 the story at hand.... They serve to  
13 *distract* from whining, alleged busy  
14 agendas of judges, more than the rest  
15 of what cites "purport to do."  
16 Mortals cannot--judges are just  
17 mortals--hold all those other case-  
18 cites-facts in mind anyway, and  
19 especially when they evince too  
20 often, by many nuances and signs,  
21 they're nearly too busy already for the  
22 lousy, simple facts in merely the one



1 case before them. I just burned the  
2 241 pg. FRAP (and 9th circuit local  
3 rules), and it's hereby rewritten to  
4 consist of about, say 3 short lines,  
5 saying, one's briefing instructions:

6 "E-mail it, just put it in words  
7 on anything, and then this  
8 court'll put, may put its own  
9 pertinent, bold and underline  
10 markings in that e-mail for the  
11 case forward {if we can read,  
12 as we read}."

13  
14 Even the shitmouth "supreme  
15 u.s. turdsuck-court" is subject now to  
16 this simplicity. They'd be so  
17 improved, they wouldn't know what  
18 to do with all that gold.

19 Imagine, "Words, cites,  
20 underline, bold, italics." <<

1 Any and every "brief," to any  
2 court, using now only e-mails  
3 instead of briefs, with this one line as  
4 the new entire FRAP--this one line in  
5 quotes, indented, above, with the 2  
6 backward arrowheads pointing to it.  
7 In fact, since the FRAP is about 99%  
8 briefs and the FRCP the same  
9 (except, for now, the trials part), the  
10 whole FRAP manual is now just 1  
11 line comprising the entire FRAP  
12 AND FRCP.

13 Briefs: "Words, cites,  
14 underline, bold, italics."  
15 <<Entire neo-FRAP,  
16 <<Entire neo-FRCP, too.  
17 {Send us the e-mail, "brief,"  
18 using this one "rule"}.

19 There's nothing else in briefs;  
20 you need the sum of 5 words  
21 above to tell people what to  
22 submit...in an e-mail, bang.

1           You don't need more.

2           It's just words, nothing more is  
3 *used* to tell a story--or even show  
4 cites. Your "rules" should be this 1  
5 line. Not the 241 pg.! FRAP (and  
6 local 9th circuit rules), the FRCP  
7 being similar.

8           YOU           DON'T           NEED  
9 ANYTHING ELSE. YOU'RE A  
10 LIAR,                   SHIT-MERICAN;  
11 BUGABOO-IST LIAR, AND ALL  
12 YOUR COURTS ARE THE LIES  
13 OF MAKING-STUMBLING. The  
14 "understood" in the one line that is  
15 (ought be) now the FRAP, etc., is that  
16 the author can try to send it marked  
17 (underlined, bold, italics); the readers  
18 (courts) can put their own highlights,  
19 marking, colored underlines on their  
20 copies, right?

21           Briefs: one line = the FRAP,  
22           the FRCP >> "Words, cites,

1 underline, bold, italics."<<--

2 how about that.

3 *A story is but words; how is a*  
4 *"case" other than I story?* It didn't  
5 take 241 pgs. of jackshit to prompt  
6 Hemingway to write; who the fuck  
7 are you shitmouth-'merican courts to  
8 "prompt" my writing my story with  
9 other than "Go ahead and write"?--it  
10 points to your brainless  
11 troublemaking and impeding the  
12 public from behind your Satan  
13 towers, pig shitmouths and judges.  
14 You lie, shit-'merican. A typist or  
15 speaker 'don't need no' shitmouth "bar  
16 degree" to talk to this court; I'll set  
17 you damn straight on my points just  
18 as we are. Whether you can read is  
19 the real concern thereafter. You're a  
20 deceiver of souls. Your unparalleled-  
21 in-size cesspool of rules are near

22

23

24

25

26

1 practicable garbage on this proverb  
2 and insight.

3 Remember it, then write. All  
4 the rules. Purple snow, Joe, is the  
5 shit-merican court liar-system. It  
6 belies (to provoke you) the merest of  
7 language you were taught to speak.

8 People might even get the  
9 FRAP memorized, shitmouth-  
10 merican, these 5 lousy words, after  
11 some centuries, and you could save  
12 paper, not having to print this one  
13 line between two FRAP covers. You  
14 could write your whole e-mail--I  
15 mean brief-- the whole goddamn  
16 thing, tell the facts, your whole case,  
17 point it all out, right from your  
18 hotmail e-mail. And just click send.  
19 **It's all JUST the characters of the**  
20 **alphabet, the whole story, *having***  
21 ***exactly zero past that "to do with***  
22 ***rules*" on that story.**

1           Fucking shitmouths; you're  
2 the nation's deceivers of the little red  
3 schoolhouse of early life. Thieves  
4 and thugs of the soul be your pigs  
5 and courts.

6           Dumb shitmouths!

7           Well, anyway...where was  
8 I....yes, I ran out of machine (Pet.  
9 App. 65; Pet. App. 73; and Pet. App.  
10 81).

11           But look, for 5 years, they  
12 wanted that, and they got it. They  
13 kept my "wife" on the other side of  
14 the Berlin Wall from me here in  
15 shitmouth-'merica, with these  
16 measurements: (Pet. App. 73, exhibit  
17 A at end). They raped her day and  
18 night when they took her, *merely that*  
19 *they took her*. I heard my wife's  
20 screams for 5 years straight now, day  
21 and night. I'm done with you  
22 shitmouth-'merican, and you will



1 bow to this case. You took all my  
2 other amendments, too, the same,  
3 raping them daily to date. I will for  
4 sure have immunity for *anything* I  
5 *ever* do shit-merican, if you do not  
6 bow to this case, and the next 1st  
7 amendment case directly behind this  
8 one, many of the same defendants.  
9 You will then feel that as "impunity,"  
10 the exact way I felt it when  
11 confronting the criminal shit-  
12 merican goon-badges who undid me  
13 completely for exactly no reason.  
14 Given the lengths you have subjected  
15 me to, it will be eternal against you,  
16 that your kind does not repeat what I  
17 have suffered. Even if you concede  
18 the case, the scars are as huge as  
19 time, and whether I might rescind  
20 some immunity then is ENTIRELY  
21 my own option. Such were your lies,  
22 shitmouth-merican. Tough.

23  
24  
25  
26

certiorari

1           No, I don't want a new  
2 machine to write this. I once had a  
3 machine, that was a real machine,  
4 (Pet. App. 73, exhibit A at end), not  
5 what's writing this for 5 years straight  
6 now (Pet. App. 65; Pet. App. 73; Pet.  
7 App. 81)--this latter being the  
8 typewriter-cross they put me on for 5  
9 years while I was factually denied  
10 the net to write my cases. What the  
11 fuck?! First off, you're not returning  
12 my original machine properly, or the  
13 life that was attached to that machine  
14 (traded stocks with it). No, and now  
15 are you maybe suggesting or thinking  
16 these shitmouth, shit-  
17 merican...bogeymen, the pigs,  
18 defendants, all...who infested my life  
19 years ago by surprise with the trauma  
20 of an 18 man SWAT team for  
21  
22  
23  
24  
25  
26



1 allowable-protected speech<sup>3</sup>, are  
2 welcome somehow to suggest to me  
3 now, 5 years later, to go write with  
4 some new-bought, "new machine,  
5 new life"?...writing the case...?...new  
6 machine?...nope, won't do.  
7 BECAUSE NOBODY WANTS  
8 JUDAS-ASSHOLE-ICIAL,  
9 (JUDICIAL) THE BOGEYMAN,  
10 HIS COURT SCUM AND PIGS, IN  
11 HIS LIFE, (or on his harddrives), IN  
12 THE FIRST PLACE. I chose to be  
13 busy with stocks, but that was  
14 murdered, stilled as death by the  
15 defendants. You can't enslave me to  
16 be a lawyer. You're already celestial  
17 dust in eternity for that try, the length  
18 I've been subjected, with the health  
19 I've never owned.

20

21

22

---

<sup>3</sup> Subject speech of the case is Pet. App. 0

23

24

25

26

1           Get out shit-merican, and your  
2 judas shitmouth courts, all of them.  
3 You've proved you stink like earless  
4 scum. I have the proof.

5           I haven't got a machine to  
6 write this case. I just ran out (Pet.  
7 App. 65; Pet. App. 73; and Pet. App.  
8 81). I'm only getting this court one  
9 copy, fuck you!, and the defendants  
10 1-each, fuck you! You fucking rats  
11 print the rest now if you need 'em.  
12 My machine is so down and at the  
13 filled zone, you have to reboot after  
14 printing only 2 pages, just about  
15 every time. You have to reboot from  
16 whatever you were doing, just to start  
17 that 2 page print job. It was always  
18 slow anyway, but now the resources  
19 are ALL GONE, the shitmerican sly  
20 court cases of mere writing that I did  
21 for them--characters and fonts *alone*  
22 have actually filled it.

1           Yeah, shit-merican, a 5 year  
2 physical body deformity-deface-  
3 starvation-denial chokehold has  
4 written both the entireties of both of  
5 the certain first amendment cases,  
6 the thousands and thousands of  
7 pages, years and years, filling the  
8 little gold cross of the 133 MHZ  
9 machine. I underscore the starvation<sup>4</sup>  
10 to ye. No, I don't "fuel"-with-food  
11 to this involuntary enslavement nor  
12 design to "becoming or being a  
13 lawyer," defendants having slyly  
14 removed my other life...wouldn't  
15 even waste my spit on it. I have  
16 discerned the shitmouth-merican  
17 pig's motto, and it read, "I'll take the  
18 hardware {and your amendments}

19

20

21           <sup>4</sup> For general ref.: starvation discussed, scattered  
22 massively throughout, in exhibits 1 and 1-a attached to  
23 amended complaint, docket 52 from the dist. court in the  
lower court on this case, (cv 07-0113 SBA), filed July  
12, 2007.

24 certiorari

25

26

1 and you take the brief guile, and I'll  
2 be in Slickerland afore ye." (From "  
3 I'll take the low road...high road"  
4 poem.)

5 I have further discerned the  
6 names, (a discovery on par with  
7 "Rumpelstiltskin")...discerned the  
8 names "Judge Chessman," and  
9 "Legislator Chessman"--both of these  
10 are the "133 <sup>5</sup>MHZ ass rapists," (just  
11 like when they were slowed-down at  
12 the red light, the Carl Chessman  
13 story..."*the red light rapist*")...rapists  
14 catching me in the slowed, tortured  
15 spirit, "stillerborn," stilled as death,  
16 writing, ever writing, extracting my  
17 marrow with this remote matrix rig-  
18 up. I feel it daily. They were defacing  
19 and mauling my starvation\* as I

---

21 <sup>5</sup> A computer processor specification

22 \* Ibidem. As footnote 4, pg. 13.

1 wrote these cases, thousands of  
2 pages. Their "rape" was the  
3 *extraction* of my very soul and  
4 marrow by this rig, machine and rig-  
5 up. In the case, it was shit-merican  
6 government, courts, all the  
7 defendants, all pigs, d.a., legislators  
8 who forced me to be subjected to  
9 this--they are the sly fucks that raped  
10 me daily after coercing me into the  
11 position by stealing my true machine  
12 (Pet. App. 73, exhibit A at end) and  
13 not returning it properly.

14           It's a play on the word "chess,"  
15 too. Particularly, I see the "upper  
16 Satan room," even some lawmakers,  
17 and various high, rather "supreme  
18 intelligences in this universe," a  
19 system, where they willed this upon  
20 me, *even as laws, my fate, as a place*  
21 *and system where they could take*  
22 *from me, larceny, rob and steal daily,*

1 *out of my very body*, according to the  
2 motto just shown, "...you take the  
3 brief guile...." The rape was  
4 unavoidable when they rig-  
5 positioned-by-removal Gimbel's  
6 machine, enslaving him to the 133  
7 MHZ anachronism instead,  
8 ""replacing his wife with a donkey  
9 for the final amusement....""...quoted  
10 from last pg., reply brief, 1st appeal,  
11 Ninth circ. (Pet. App. 65, in and  
12 about last line).

13 Judge Chessman, and others  
14 "with the name," the fame up there,  
15 wanted me there for extractions and  
16 revilements, and *I have lived it*. But  
17 no more. You bow, pay, then get out.

18 Briefly, in a section of my  
19 life's story, I was "awarded" a steady-  
20 sum income, accorded with regularity  
21 to date, placed in the early 1980's.  
22 Circumstances at the time displeased



1 me such that I vowed I would never  
2 buy even merely food with it. For  
3 over 35 years I had exactly kept that  
4 vow, but just before arrest when the  
5 computers succumbed to defendants'  
6 grand larceny and great train robbery  
7 of me, I was having a plan that finally  
8 my learned-to stocks trading on the  
9 new machine would take me places,  
10 and I would <sup>6</sup>finally then begin eating  
11 properly at all, too (nothing I've ever  
12 done for 35-plus years).

13         When I saw that the cozy  
14 interest in good trading minutely  
15 buoyed my spirits, I set the figure-  
16 date at about 30 years out where I  
17 would have to, and should start  
18 eating. The interest was such that  
19 trading code sustained me somewhat,  
20 APART from food (apart from the

---

21  
22 <sup>6</sup> (Reference: mentioned on physical pg. 7 of exhibit 1  
23 (one) attached to amended complaint.

1 traditional chew & chow stuff);  
2 therefore, *not* food somewhat  
3 sustained me. I had barely just begun  
4 trading when they ended me. Then,  
5 when they took that life illegally,  
6 then enslaved me to revilement, my  
7 face broke down, my marrow  
8 decomposed much, much faster--I  
9 could feel it daily--but I chose not to  
10 add 1 penny of real, chow type food  
11 to the system of food I had been  
12 using (extreme not-eating, not  
13 chowing properly until maybe 30  
14 years up the road, as I said). I don't  
15 change for judas; for judas shit-  
16 'merican courts. I don't want the life  
17 he offers, and his courts; I don't want  
18 his scum on my harddrive or his  
19 Satan "business" in my mailbox  
20 whatsoever; never did; thus, the  
21 "relief" of any shit-merican court, as  
22 I've said from the beginning, *will be*



1 *first: burned* (see *original* complaint,  
2 paragraphs 102, 209). If not able to  
3 do that, second, there I've said: it will  
4 all be given to the poor. Above all  
5 else, you (defendants) will pay it  
6 though, for your crimes.

7         So...the foregoing...just a brief  
8 note...I have preferred the final  
9 starvation,\* too, (nearing 40 years  
10 straight now, my best estimate),  
11 amidst the other revilements the  
12 shitmouth-merican courts and  
13 defendants have put me to.

14         Paul Harvey: "Now you know  
15 how "Render unto Caesar" (Pet. App.  
16 66) came to pass"...the rest of the  
17 story."

18         I.E., starvation and judas-  
19 machine rig up's go well together.  
20 Render it to him.... The other cheek?

---

22         \* Ibidem. As footnote 4, pg. 13.

1 I don't want no goddamn life under  
2 the shitmouth, shit-merican, illegal-  
3 on-speech-persecuting, bogey-  
4 fuckmouth pig-man and his  
5 shitmouth, shit-'merican courts. Get  
6 out and die, you defendants, if you  
7 don't pay your way out of your  
8 criminality. The pig defendants  
9 should be so lucky to be allowed to  
10 pay their way out of their criminal  
11 persecutions against the first  
12 amendment in this goddamn  
13 shitmouth country. Those they  
14 typically accuse are never that lucky  
15 themselves. Defendants took a 35-  
16 plus denial hold on me already, and  
17 put me in an additional 5 years  
18 starvation-defacement chokehold on  
19 top of that, damning all my trading  
20 code and pursuits, marrying me to a  
21 donkey in denial and involuntary  
22 enslavement on top of that, while

1 they ass-raped my wife next door,  
2 captive, for 5 years straight in the  
3 manner I've indicated.

4 Your courts won't get out of  
5 that box (Pet. App. 65; Pet. App. 73;  
6 and Pet. App. 81), shitmouth-  
7 merican; not on my life. Bow. I type  
8 it's last rays of evening on it now.  
9 I've seen pollution, and I've seen  
10 pollution, but the shit-merican  
11 "system," defendants, other sly fucks  
12 in it, the unwanted badge strollers,  
13 oglers, parasites through my living  
14 room, eternal and daily, soul and  
15 marrow ass-raping as they do...would  
16 be dead for their act in the hands of  
17 some spirits I've seen proselytize  
18 "honor..."

19 At least pay.

20 ...I will allow you one last  
21 chance, the defendants, to pay their  
22 way out of their factual criminality.

1 And no, I'm not getting you any  
2 fucking tabs, excerpts (apparently  
3 now "appendices" in your slime  
4 pond) last word in exhibits, "excerpts  
5 of record," what have you, (that I  
6 thoroughly would, and *did* always try  
7 to get--go see it--in all previous  
8 briefing despite literal hell breaking  
9 loose every time in my condition). I  
10 used to always try to get this to  
11 courts, to focus some damn judge  
12 weasel eyes that can't read, but no  
13 more, shit-merican satan-boys. Go  
14 look up the record your goddamn  
15 fucking self--I can't print it anyway--  
16 and read it.<sup>7</sup>

17 Go read a book, shitmouth-  
18 merican. The book of John Gimbel.  
19 Thousands of pages, this case, earlier  
20 dockets. A story told true, with all  
21

---

22 <sup>7</sup> Some of the record has been submitted to this petition:  
23 see APPENDICES....

1 them words, can't lack all they try to  
2 say.

3       He knew I'd been murdered,  
4 too, that swine judge <sup>8</sup>Jenkins in dist.  
5 court, my having to write all that...so  
6 what does he sly? His first sly-ing  
7 was somehow, "Do it again; I like to  
8 watch whiteys, or anyone really,  
9 jump from skyscrapers." How does  
10 "get leave to amend" (Jenkins order,  
11 Pet. App. 9, 32, 52), where a  
12 goddamn life story--excuse me, the  
13 life story OF THE CASE being that  
14 whopping 500 pages of original  
15 complaint--how does *the original*  
16 *complaint* NOT tell, from any angle,  
17 a sufficient "story" about the events  
18 surrounding the subject speech, (Pet.  
19 App. 0), a lousy 134 words?

---

20  
21  
22 <sup>8</sup> M. J. Jenkins was the first judge in dist. court on this case.

1           500-plus pgs. didn't tell it?  
2 You lie, shitmouth-'merican. No,  
3 Jenkins was just playing "N...trouble-  
4 maker"--a sly fuck. Nicked,  
5 stubbled, stumbled, stumped, nibbed  
6 comes the plaintiff by him, because  
7 of him. Jenkins is too white for me;  
8 and I told <sup>9</sup>SBA by the way, before  
9 she said shit in her order, (and she  
10 had never read the amended  
11 complaint; still hasn't, no doubt) in  
12 my combined oppo. to defendant's  
13 motions to dismiss *amended*  
14 complaint that I was  
15 <sup>10</sup>DEFINITELY a nigger more  
16 than any black EVER will be,  
17 starvation for near 40 years now, and  
18 all. And I'm still proud that I am.

---

20 <sup>9</sup> SBA: Sandra B. Armstrong: the S.F. dist. court case  
21 under Jenkins was assigned to Oakland, SBA, after  
22 Jenkins recused after giving leave to amend complaint.

23 <sup>10</sup> For reference.: said this in docket 62 in the dist. court  
below in this petitioner's case now before you, filed  
Aug. 23, 2007, on pg. 1, ln 26 through pg. 2 ln 17.



1 Exactly a nigger. I am the all-time,  
2 supreme nigger, mr. John Gimbel  
3 here. It's not even in quotes, and  
4 never will be, and it's not even  
5 arguable. Go have your racist court  
6 against me then, you goddamn,  
7 motherfucking, erm...bastards.

8 Can't you fucking find the  
9 goddamn sucker, "allegations" true in  
10 500 pages? Pft...he just wanted to  
11 make trouble, that so-white Mr.  
12 Jenkins, and it had infinitely more  
13 gggnaaashingly (and with no teeth!)  
14 murderous consequences against my  
15 ongoing defacement and "ass-  
16 raping" of my soul. My time was  
17 short, now long since gone, the  
18 donkey told in here....

19 You print it; you read it; you  
20 call for it; you make the copies. Feel  
21 free to send me an e-mail at  
22 johngimbel@charter.net if you can

1 type or read. I want to hear  
2 immediately about the first case in  
3 u.s. courts of anything like that.

4 Go read a book, shitmouth-  
5 merican. The book of John Gimbel.

6 Anyway, The Brief now:  
7  
8  
9  
10

## 11 **The Brief**

12 --question of the ages--  
13

### 14 **MAY A CITIZEN DEFEND THE** 15 **FIRST AMENDMENT?** 16

17 A study, proposition: Gimbel  
18 had the right to kill all 18 or so  
19 errant SWAT members, defendants in  
20 the cv 07 0113 SBA district case  
(9th cir. appeal no. 07-16966):

21 He had this right when they  
22 tried to take away his freedom for  
23

24 certiorari



1 protected speech. But he gave  
2 himself as a meek lamb.

3 The proposition is founded upon  
4 this premise, a study:

5 Your shit-merica commits  
6 genocide presently in Iraq. (The  
7 "Contemporary war.") Obviously,  
8 when it's either this, or a "legitimate"  
9 war, its patriots ALWAYS say the  
10 american soldiers fight and kill for  
11 the very reason that we have these  
12 amendments, and that these  
13 amendments are thereby secured  
14 (protected). You kill people that these  
15 amendments are secure; it's been said  
16 time immemorial out of the mouths  
17 of, by "the people that run this  
18 country."

19 But where is that war here? It  
20 went down to...it's at Gimbel's front  
21 door.

22 Yes. Gimbel absolutely knew  
23 his speech was protected. And  
24 absolutely knowing such, Gimbel had

1 THE RIGHT to kill those who would  
2 enslave, deny, deprive, deface,  
3 distort, maul, threaten directly and  
4 massively to spill his blood with  
5 police armories, cause more problems  
6 to himself for near half decades  
7 now...for protected speech from the  
8 beginning. That same war the  
9 patriots talk of that is for the  
10 amendments, etc., is/was exactly at  
11 Gimbel's front door, and Gimbel had  
12 the RIGHT to kill every last one who  
13 tried to steal from him for protected  
14 speech and who did commit atrocious  
15 grand larceny in Gimbel's living  
16 room, and the right to kill every last  
17 callup, backup, including kill the  
18 national guard, marines, president  
19 and generals, to protect what was  
20 already his, rightfully and legally.

21 But this couldn't happen, or he  
22 would have died. That's how hard.  
23 So he gave himself to them meekly,  
24 and what he got was a violence of

1 time unfathomable, that surpasseth all  
2 understanding, raping his "wife" and  
3 life (Pet. App. 75-80), his precious  
4 new stocks computer; only new thing  
5 he's ever really owned; never's been  
6 married to a human; this going on  
7 for a near half decade now, pig-may-  
8 care. How hard it would have been  
9 to secure protected speech AND  
10 FREEDOM from the "most powerful  
11 nation on earth" lying directly and  
12 errantly at Gimbel's front door! He  
13 couldn't.

13 How hard was that? How hard  
14 should it be now, in terms of these  
15 defendants, to avoid paying  
16 recompense?

16 Well, they'll have to kill every  
17 natl. guardsman, marine and the  
18 president to avoid it. THAT'S exactly  
19 how hard it WILL be for these, one  
20 way or the other. It's exact equivalent  
21 awaits their fate, should they be  
22 evasive, or attempt to renege.

23  
24  
25  
26

1       It's exactly how hard it will now  
2 be...for these defendants to get out of,  
3 or avoid having to pay the exact  
4 recompense. They should be so  
5 lucky to be able to PAY their way out  
6 of their exact CRIMINALITY at  
7 Gimbel's door.

8       Now there's a little start for  
9 justice--not much, as I don't spend it,  
10 the recompense/money, (as I've said,  
11 I give it to the poor--paragraphs 102,  
12 209, *original* complaint). You must  
13 consider, defendants were not  
14 disarmed beginning with the  
15 indictment of themselves in this civil  
16 prosecution, (and for years); nor  
17 chilled; nor were they enslaved; nor  
18 a 133 MHZ victim for 5 years now  
19 before courts; nor had all their  
20 possessions ass raped daily by satan  
21 for near a half decade now; many  
22 more atrocities which they did to me.  
23 In these ways I was coerced into  
24 being their victim for protected

1 speech--but it's a little start for  
2 justice, (their recompense), and it will  
3 be done.

4 They say people get killed  
5 routinely for these amendments-to-  
6 be-secure, by the hands of the united  
7 states, in any action or war it  
8 conducts out there.

9 Then aren't those, by this, who  
10 steal amendments with force when  
11 they should not have, criminals?

12 To wit, again: If you would  
13 kill to protect an amendment, calling  
14 them criminals in these countries you  
15 war on as a nation, even killing them,  
16 then it follows seeing ANY  
17 HUMAN, including the defendants  
18 at home here, STEALING  
19 AMENDMENTS THEY ARE NOT  
20 ENTITLED TO, makes them exactly  
21 criminals, not so?--exactly like those  
22 you would outright kill, ("war  
23 upon"), or consider strongly to, until  
24 their lie was put down satisfactorily,

1 where you're out warring on foreign  
2 soil to secure the u.s. amendments  
3 and constitution.

4 Before this constitution and  
5 amendments of this united states, I  
6 believe this court MUST  
7 CONCLUDE, given foreign  
8 invasions and fatal renditions of  
9 countries by the united states, for  
10 exact ideologies it ascribes motivate  
11 those killings (protection of the  
12 amendments) that this citizen, too,  
13 has a right no different when satan  
14 shall have called him at his front  
15 door. So pay up.... They grabbed his  
16 life "in the name of designating him  
17 the foolish lamb"; now let them  
18 follow him...so far behind they never  
19 endanger him again. The recompense  
20 as lesson will serve this purpose....



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

---

***Thus:***

***As hard as for me to have killed every last lying and errant defendant over protected speech, the battle at my door--and kill all the u.s. marines, etc., who might have been called up, too...***


***...so shall it be as hard for such as these defendants to avoid the payment....***

***Then you just go ahead and see what you can "do about your 'freedom you already own there,' " shit-merican shitmouth defendants--the rattle at your door--like Gimbel had to suffer.***

---

The court must do this.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Dated: March 3, 2009 

JOHN GIMBEL,  
Petitioner for cert./  
plaintiff

1	TABLE OF CONTENTS TO	
2	APPENDICES	
3	Opinion of the Ninth cir. court of	
4	appeals, filed January 13, 2009.....	
5	.....Pet. App. 1	
6		
7	Opinion of Oakland Dist. court,	
8	filed Sept. 19, 2007.....Pet. App. 4	
9		
10	Opinion of (then in) S.F. District	
11	court, filed June 22,	
12	2007.....Pet. App. 9, 32, 52	
13		
14	ADDITIONAL APPENDICES-	
15	MATERIAL PURSUANT TO S. Ct.	
16	RULE 14(i)(vi):	
17		
18	The subject speech of the entire	
19	case, a screenshot of the actual subject	
20	speech, a posting within the forum, from	
21	petitioner's original complaint, exhibit A	
22	attached thereto.....Pet. App. 0	
23		
24		
25		
26		

(Note: because of resource limitations, I am unable to reformat the foregoing screenshot to decent legibility in this booklet size; a much better view is in exhibit A, orig. complaint.)

Petitioner's "Trailing," reply appeal brief in the previous Ninth cir. appeal court on this case, filed January 25, 2008.....Pet. App. 65

From a related case (dist. court no. cv 07-5816 CRB; Ninth appeal no. 08-15701)<sup>a</sup>, this is petitioner's "Combined Oppositions to All Defendants' Motions to Dismiss Complaint" filed in the dist. court Feb. 21, 2008.....Pet. App. 73

---

<sup>a</sup> A related case containing repeating defendants; for pure speech again; for speech *only* to cops, *again*; for likely protected speech; for huge sanctions they took again with their armadas for such; deemed incredibly worthy and material to inclusion.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

From the above same related case  
(dist. court no. cv 07-5816 CRB; Ninth  
appeal no. 08-15701)<sup>a</sup>. this is exhibit B  
attached to appellant's opening brief, filed  
May 5, 2008.....Pet. App. 81

Petitioner's/Appellant's opening  
brief in the previous Ninth cir. appeal  
court on this case, filed December 10,  
2.....Pet. App. 86

---

MICROSOFT

CrescentCity95531.com's Community Forum - A Dravenet.com Forum - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Address Back Forward Stop Refresh Home Search Favorites History Mail Size Print Links

**Free Guestbooks and over 25 more FREE Tools**

Forum Reply

**Subject:** Just got a \$5 parking ticket. Need to depulize C.City, fix up pippo.

**Name:** [REDACTED]

**Date Posted:** April 04 - 4:25 PM

**Message:** [REDACTED]

Notes Was deleted from Forum April 15, 04

See previous at the next link something

Ads by Google

**Airsoft Guns On Sale Now**  
Hurry, these sales prices are Great  
Guns starting at only \$3.99!  
shortyusa.com

**Airsoft Guns at AirSpital**  
Free Shipping Guns, Rifles, Acces, Apparel, Gear  
www.airspital.com

Low Airsoft

Screen shot of actual posting highlighting red text to left on while making screenshot

Start CrescentCity95531.com My Documents 4:06 11:05 AM

BEST AVAILABLE COPY



Appendix 1

FILED

JAN 13 2009

MOLLY C.DWYER, CLERK  
U.S.COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

JOHN GIMBEL,  
Plaintiff -Appellant,  
v.  
STATE OF CALIFORNIA,  
et al.,  
Defendants -Appellees.

No. 07-16966  
D.C. No. CV-07-  
0113 SBA

\*MEMORANDUM

Appeal from the United States District Court  
for the Northern District of California  
Saundra B.Armstrong, District Judge, Presiding

Submitted December 17, 2008\*\*

Before: GOODWIN, WALLACE, and RYMER,  
Circuit Judges.

John Gimbel appeals pro se from the  
district court 's judgment dismissing with

---

\* This disposition is not appropriate for publication and  
is not precedent except as provided by 9th Cir.R.36-3.

\*\* The panel unanimously finds this case suitable for  
decision without oral argument. See  
Fed R.App.P.34(a)(2).

## Appendix 2

1 prejudice his 42 U.S.C. § 1983 action. We review  
2 a dismissal pursuant to the district court's  
3 inherent power for abuse of discretion. *See*  
4 *Anheuser-Busch, Inc. v. Natural Beverage*  
5 *Distributors*, 69 F.3d 337, 348 (9th Cir. 1995).  
6 We review de novo a dismissal for failure to  
7 state a claim. *Decker v. Advantage Fund*  
8 *Ltd.*, 362 F.3d 593, 595 –96 (9th Cir. 2004). We  
9 may affirm the district court on any ground  
10 supported by the record. *See Thompson v. Paul*  
11 *, 547 F.3d 1055, 1058 –59 (9th Cir. 2008). We*  
12 *affirm.*

13 We have reviewed Gimbel's "amended  
14 complaint" and agree with the district court  
15 that it is "utterly inconsistent with the orderly  
16 administration of justice." *Leon v. IDX*  
17 *Sys. Corp.*, 464 F.3d 951, 958 (9th  
18 Cir. 2006). Though we hold pro se civil rights  
19 plaintiffs to less stringent pleading standards  
20 than represented parties, *see Haines v. Kerner*  
21 *, 404 U.S. 519, 520 –21 (1972) (per*  
22 *curiam); King v. Atiyeh*, 814 F.2d 565, 567 (9th  
23 Cir. 1987), the district court did not abuse its  
24 discretion in exercising its inherent power to  
25 dismiss Gimbel's abusive complaint with  
26 prejudice. *Carrigan v. California State*  
*Legislature*, 263 F.2d 560, 564 (9th  
Cir. 1959) ("Perhaps the easiest procedure in  
this case would be to dismiss the entire appeal  
as frivolous, and strike the briefs and pleadings  
filed by appellant ... as either  
scandalous, impertinent, scurrilous, and/or

### Appendix 3

without relevancy. Undoubtedly such action would be justified by this court.").

Moreover, even construing Gimbel's pro se amended complaint liberally, he has failed to state a claim upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6); *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). Gimbel has alleged no facts to remedy the shortcomings outlined by the district court in dismissing his original complaint. Because he was given the opportunity to correct the deficiencies, the district court did not err in dismissing his amended complaint with prejudice. See *Sisseton-Wahpeton Sioux Tribe of Lake Traverse Indian Res., N. Dakota & S. Dakota v. United States*, 90 F.3d 351, 355 -56 (9th Cir. 1996).

**AFFIRMED.**

Appendix 4

Case 4:07-cv-0113 SBA Document 68 Filed 09/19/2007

**E-FILED**

Sep 19 2007

RICHARD W. WIEKING

CLERK, U.S. DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE NORTHERN DISTRICT OF**

**CALIFORNIA**

JOHN GIMBEL

Plaintiff

vs.

NO. : C 07-0113 SBA

**ORDER**

STATE OF CALIFORNIA, DEL NORTE  
COUNTY SHERIFF'S DEPARTMENT,  
JERRY HARWOOD, BILL STEVEN,  
GENE McMANUS, MELANIE BARRY,  
DANA RENO, ROBERT BARBER,  
ED FLESHMAN, CRESCENT CITY  
POLICE DEPARTMENT,  
DOUGLASS PLACK,  
GREG JOHNSON, JAMES  
HOLT, CALEB CHADWICK, THOMAS  
BURKE, DEL NORTE DISTRICT ATTORNEY,  
KEITH MORRIS, AC FIELD, MICHAEL RIESE,  
DARREN McELFRESH, AND FRITZ  
LUDERMAN

Defendants

Entered on Civil Docket SEP 19 2007

## Appendix 5

1           On January 8, 2007, plaintiff John Gimbel filed  
2 his original Complaint in this action. All of the  
3 defendants moved to dismiss the Complaint on various  
4 grounds. On June 22, 2007, the Court granted the  
5 Motions to Dismiss. See Docket Nos. 49 & 50. The  
6 Court's Order included a detailed discussion of the  
7 pleadings and applicable law, and specifically allowed  
8 Gimbel 30 days to file an Amended Complaint  
9 properly alleging claims, if any, against the  
10 defendants. On July 12, 2007, plaintiff filed a 6-  
11 page document entitled "Amended Complaint." Docket  
12 No. 52.

13           Judge Jenkins recused himself from this case on  
14 July 23, 2007, and the case was reassigned to this Court.  
15 See Docket Nos. 55 & 56. The defendants have moved  
16 to dismiss the Amended Complaint for failure to state a  
17 claim pursuant to Federal Rule of Civil Procedure  
18 12(b)(6).

19           The Court need not look past the first sentence of  
20 Gimbel's "Amended Complaint" to see that it is nothing  
21 more than profanity-ridden drivel, replete with racial  
22 epithets directed at specific members of this Court, and

23  
24 Entered on Civil Docket SEP 19 2007  
25  
26

## Appendix 6

1 should be dismissed with prejudice. Even if the  
2 "Amended Complaint" actually alleged a cognizable  
3 claim (which a cursory review of the document  
4 demonstrates that it does not), the Court is under no  
5 obligation to consider the merits of Gimbel's  
6 calumnious screed, which is a stream-of-consciousness  
7 diatribe directed primarily at insulting the Court.

8 While it is true that pro se complaints are held to  
9 a less stringent pleading standard than attorneys, pro se  
10 litigants must follow the same general rules of procedure  
11 and decorum that govern other litigants. *See Haines v.*  
12 *Kerner*, 404 U.S. 519 (1972); *King v. Atiyeh*, 814 F.2d  
13 565, 567 (9th Cir. 1986); *Brown v. Rumsfield*, 211  
14 F.R.D. 601, 605 (N.D. Cal. 2002). The Amended  
15 Complaint filed by Gimbel is an abusive document  
16 designed to insult the Court, and will be dismissed under  
17 the Court's inherent powers to summarily dismiss  
18 abusive pleadings.

19 "Due to the very nature of the court as an  
20 institution, it must and does have an inherent power to  
21 impose order, respect, decorum, silence, and compliance  
22 with lawful mandates. This power is organic, without

23  
24 Entered on Civil Docket SEP 19 2007  
25  
26



## Appendix 7

1 need of a statute or rule for its definition, and it is  
2 necessary to the exercise of all other powers." *United*  
3 *States v. Shaffer Equip. Co.*, 11 F.3d 450, 461 (4th  
4 Cir.1993). Accordingly, "if the complaint or other  
5 pleadings are abusive or contain offensive language,  
6 they may be stricken *sua sponte* under the inherent  
7 powers of the court." *Phillips v. Carey*, 638 F.2d 207,  
8 208 (10th Cir.1981). Particularly apposite here, the court  
9 in *Theriault v. Silber*, 579 F.2d 302 (5th Cir.1978)  
10 dismissed an appeal with prejudice because the  
11 appellant's notice of appeal contained "vile and insulting  
12 references to the trial judge." Although recognizing the  
13 leniency typically given to pro se plaintiffs, the court  
14 stated, as is apt here: "This court simply will not allow  
15 liberal pleading rules and pro se practice to be a vehicle  
16 for abusive documents. Our pro se practice is a shield  
17 against the technical requirements of a past age; it is not  
18 a sword with which to insult a trial judge." *Id.* at 303;  
19 *see also Carrigan v. California State Legislature*,  
20 263 F.2d 560, 564 (9th Cir.1959) ("Perhaps the easiest  
21 procedure in this case would be to dismiss the entire  
22 appeal as frivolous, and strike the briefs and pleadings

23 Entered on Civil Docket SEP 19 2007  
24  
25  
26

## Appendix 8

1 filed by appellant ... as either scandalous, impertinent,  
2 scurrilous, and/or without relevancy. Undoubtedly such  
3 action would be justified by this Court.”)

4 Accordingly, IT IS HEREBY ORDERED THAT  
5 defendants’ Motions to Dismiss [Docket Nos. 57 & 59]  
6 are GRANTED. Gimbel’s Amended Complaint is  
7 DISMISSED WITH PREJUDICE. The Clerk is directed  
8 to close the file and terminate any pending matters.

9 IT IS SO ORDERED.

10  
11 Dated: 9/18/07 s/SAUNDRA BROWN ARMSTRONG

12 United States District Judge.  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

24 Entered on Civil Docket SEP 19 2007  
25  
26

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**JOHN GIMBEL**  
Plaintiff

**CASE NO. : C070113 MJJ  
ORDER GRANTING  
DEFENDANT'S  
MOTION TO DISMISS**

v.

**COUNTY OF DEL NORTE, JERRY HARWOOD,  
BILL STEVEN, GENE McMANUS, MELANIE  
BARRY, ROBERT BARBER, ED FLESHMAN,  
KEITH MORRIS, A.C. FIELD, DISTRICT  
ATTORNEY MICHAEL RIESE, DARREN  
McELFRESH,**  
Defendants.

**INTRODUCTION**

Before the Court is a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) brought by Defendants Michael Riese, Keith Morris, Darren McElfresh, A.C. Fields, (collectively, "District Attorney Defendants"), Bill Steven, Gene McManus, Melanie Barry, Robert Barber, Jerry Harrwood (collectively, "Sheriff Department Defendant"), and the County of

## Appendix 10

Del Norte (collectively, "County Defendants").<sup>1</sup> In the current motion Defendants seek to dismiss all of Plaintiff's claims. Pro se Plaintiff John Gimbel ("Plaintiff" or "Gimbel") opposes Defendants' Motion. For the following reasons, the Court **GRANTS** Defendants' Motion to Dismiss.

### FACTUAL BACKGROUND

In this civil action Plaintiff seeks monetary damages from Defendants under federal and state causes of action resulting from Plaintiff's arrest and subsequent prosecution for an Internet message posted<sup>2</sup> on the

---

<sup>1</sup> Docket No. 14. Plaintiff alleges claims against the following list of Defendants: State of California, Del Norte County Sheriff's Department, Jerry Harwood, Bill Steven, Gene McManus, Melanie Barry, Dana Reno, Robert Barber, Ed Fleshman, Crescent City Police Department, Douglas Plack, Greg Johnson, James Holt, Caleb Chadwick, Thomas Burke, Del Norte District Attorney, Darren McElfresh, and Fritz Luderman.

<sup>2</sup> Pro se Plaintiff's internet posting read,

*Just got a \$5 parking ticket. The Crescent City piggy-wiggly that gave it to me left a little over-zealous. That's a drag. I am hereby deputizing all the citizens of Crescent City to fix up some of the f\*ck up piggos. Grab those hi-powered deer rifles, each and every, and get in groups of 50 and more and go breeze away to dust the skull of the policy chief. Make an example of that scum. That should do it for awhile. However, if any other piggos down at the station give you crap on this or get in the way, then blow their skulls off, too.*

## Appendix 11

Internet Community Forum for the City of Crescent City. As best as the Court can discern, the material allegations from Plaintiff's Complaint are as follows.

On April 8, 2004, the Del Norte County Sheriff's Department arrested Plaintiff and removed two computers and two handguns from the arrest location. (Compl. ¶ 5.) Defendants charged Plaintiff with violating Cal. Penal Code § 71.<sup>3</sup> (*Id.* ¶ 25.) Plaintiff's criminal jury trial began on September 26, 2005. (*Id.* ¶ 121.) Following his conviction, the trial court sentenced Plaintiff on October 27, 2005.<sup>4</sup> However, on June 17, 2006, the appellate court overturned Plaintiff's conviction. (*Id.* ¶¶ 5, 10.)

On August 30, 2004, Plaintiff filed a notice of claim titled "Government Claim For Damages and Injunctive Relief (Government Code 910)." (*Id.* Ex. 2.) Plaintiff's government claim against Defendants alleged

---

(Compl. Ex. A.)

<sup>3</sup> "Threatening Public Officers and Employees and School Officials." Cal. Penal Code § 71.

<sup>4</sup> See Plaintiff's Exhibit 4, Docket No. 4

## Appendix 12

the same causes of action against the same list of Defendants as does Plaintiff's current Complaint. (*Id.*) Plaintiff alleges that he filed the claim within the statutory of limitations period for such a claim. (*Id.* ¶ 7.) Plaintiff's administrative claim was rejected on October 15, 2005. (Declaration of John Vrieze ("Vrieze Decl.") ¶ 9, Ex. H.)

On January 8, 2007, Plaintiff filed the operative complaint now before this Court. Plaintiff's Complaint alleges federal claims for relief against Defendants for violation of his rights under the First, Second, and Fourth Amendments of the United States Constitution. (*Id.* ¶¶ 215, 234, 236.) Plaintiff's Complaint also alleges state law tort causes of action for intentional infliction of emotional distress, assault, battery, malicious prosecution, trespass, conversion of personal property, and false imprisonment. (*Id.* ¶¶ 222, 224, 226, 228, 230.) Plaintiff seeks damages of \$1.36 billion. (*Id.* ¶ 106.)

### LEGAL STANDARD

#### I. Motion to Dismiss



## Appendix 13

1 A motion to dismiss pursuant to Federal Rule of  
2 Civil Procedure 12(b)(6) tests the legal sufficiency of a  
3 claim. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir.  
4 2001). Because the focus of a Rule 12(b)(6) motion is  
5 on the legal sufficiency, rather than the substantive  
6 merits of a claim, the Court ordinarily limits its review  
7 to the face of the complaint. *See Van Buskirk v. Cable*  
8 *News Network, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002).  
9 Generally, dismissal is proper only when the  
10 plaintiff has failed to assert a cognizable legal theory or  
11 failed to allege sufficient facts under a cognizable legal  
12 theory. *See SmileCare Dental Group v. Delta Dental*  
13 *Plan of Cal., Inc.*, 88 F.3d 780, 782 (9th Cir. 1996);  
14 *Balisteri v. Pacifica Police Dep't*, 901 F.2d 696, 699  
15 (9th Cir. 1988); *Robertson v. Dean Witter Reynolds,*  
16 *Inc.*, 749 F.2d 530, 534 (9th Cir. 1984). Further,  
17 dismissal is appropriate only if it appears beyond a  
18 doubt that the plaintiff can prove no set of facts in  
19 support of a claim. *See Abramson v. Brownstein*, 897  
20 F.2d 389, 391 (9th Cir. 1990). In considering a Rule  
21 12(b)(6) motion, the Court accepts the plaintiff's  
22 material allegations in the complaint as true and  
23  
24  
25  
26

## Appendix 14

1 construes them in the light most favorable to the  
2 plaintiff. See *Shwarz v. United States*, 234 F.3d 428, 435  
3 (9th Cir. 2000).

4 A court may dismiss a complaint pursuant to  
5 Federal Rule of Civil Procedure 12(b)(6) for the  
6 pleading of insufficient facts under an adequate theory.  
7 *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530,  
8 533-34 (9th Cir. 1984). When deciding upon a motion to  
9 dismiss pursuant to Rule 12(b)(6), a court must take all  
10 of the material allegations in the plaintiff's complaint  
11 as true, and construe them in the light most favorable to  
12 the plaintiff. *Parks School of Business, Inc. v.*  
13 *Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995).

14 In the context of a motion to dismiss, review is  
15 limited to the contents in the complaint. *Allarcom Pay*  
16 *Television, Ltd. v. General Instrument Corp.*, 69 F.3d  
17 381, 385 (9th Cir. 1995). When matters outside the  
18 pleading are presented to and accepted by the court, the  
19 motion to dismiss is converted into one for summary  
20 judgment. However, matters properly presented to the  
21 court, such as those attached to the complaint and  
22 incorporated within its allegations, may be considered as  
23  
24  
25  
26

## Appendix 15

part of the motion to dismiss. *See Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1989). Where a plaintiff fails to attach to the complaint documents referred to therein, and upon which the complaint is premised, a defendant may attach to the motion to dismiss such documents in order to show that they do not support the plaintiff's claim. *See Pacific Gateway Exchange*, 169 F. Supp. 2d at 1164; *Branch v. Tunnell*, 14 F.3d 449, 44 (9th Cir. 1994) (overruled on other grounds). Thus, the district court may consider the full texts of documents that the complaint only quotes in part. *See In re Stay Electronics Sec. Lit.*, 89 F.3d 1399, 1405 n.4 (1996), *cert denied*, 520 U.S. 1103 (1997). This rule precludes plaintiffs "from surviving a Rule 12(b)(6) motion by deliberately omitting references to documents upon which their claims are based." *Parrino v. FHP, Inc.*, 146 F.3d 699, 705 (9th Cir. 1998).

### ANALYSIS

#### **I. Motion to Dismiss § 42 U.S.C. 1983 Claims Against District Attorney Defendants**

## Appendix 16

### A. Absolute Prosecutorial Immunity For

#### District Attorney Defendants

District Attorney Defendant's contend that Plaintiff's 42 U.S.C. § 1983 claims against Michael Riese, Keith Morris, Darren McElfresh, and A.C. Field are barred as a matter of law by absolute prosecutorial immunity. Plaintiff's Opposition alleges no legally cognizable theory or factual allegation to Defendant's opposition. As explained below, the Court finds that District Attorney Defendants are entitled to absolute prosecutorial immunity.

A prosecutor performing an advocate's role is an officer of the court entitled to absolute immunity. *See Buckley v. Fitzsimmons*, 509 U.S. 259, 272-73 (1993). Prosecutors therefore are absolutely immune from liability for their conduct as "advocates" during the initiation of a criminal case and its presentation at trial. *See id.*; *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976); *see, e.g., Burns v. Reed*, 500 U.S. 478, 490-91 & n.6 (1991) (prosecutors absolutely immune for their conduct before grand juries and in presenting evidence at probable-cause hearings for a search warrant); *Imbler*,

## Appendix 17

1 424 U.S. at 431 (prosecutor absolutely immune from  
2 liability for the knowing use of false testimony at trial);  
3 *Broam v. Bogan*, 320 F.3d 1023, 1029-30 (9th Cir.  
4 2003) (prosecutors absolutely immune for gathering  
5 additional evidence after probable cause is established or  
6 criminal proceedings have begun when they are  
7 performing a quasi-judicial function). The "reasons  
8 supporting the doctrine of absolute immunity apply with  
9 equal force regardless of the nature of the underlying  
10 action." *Id.* (citing *Flood v. Harrington*, 532 F.2d 1248,  
11 1251 (9th Cir. 1976)). The touchstone of this immunity  
12 is whether the attorney's actions are "intimately" or  
13 "closely" associated with the judicial process. *See id.* If  
14 the government attorney is performing acts intimately  
15 associated with the judicial phase of the litigation, that  
16 attorney is entitled to absolute immunity from damage  
17 liability. *See Id.*

18 Prosecutors are entitled only to qualified, not  
19 absolute, immunity when they perform administrative or  
20 investigatory, rather than advocacy, functions. *See*  
21 *Kalina v. Fletcher*, 522 U.S. 119, 122-31 (1997). Thus,  
22 in determining immunity, the court examines the nature  
23  
24  
25  
26

## Appendix 18

1 of the function performed, not the identity of the actor  
2 who performed it. *See id.* at 127. Absolute immunity  
3 requires that the activities at issue be "intimately  
4 associated with the judicial phase of the criminal  
5 process." *Imbler*, 424 U.S. at 430. Prosecutors therefore  
6 are not absolutely immune when they take part in the  
7 preliminary gathering of evidence that may ripen into a  
8 potential prosecution, *See Buckley*, 509 U.S. at 273;  
9 *Nash-Holmes*, 169 F.3d at 642; *Gobel v. Maricopa*  
10 *County*, 867 F.2d 1201 (9th Cir. 1989), or give advice to  
11 the police in the investigative phase of a criminal case,  
12 *See Burns*, 500 U.S. at 493.

13 Here, District Attorney Defendants contend that  
14 allegations in Plaintiff's Complaint fall within the scope  
15 of their authority to act in a quasi-judicial capacity. In  
16 Plaintiff's Complaint Plaintiff makes a general assertion  
17 that there was no probable cause to issue a warrant for  
18 his arrest. (Compl. ¶ 24.) Plaintiff also alleges  
19 Defendant Keith Morris presented false evidence in  
20 response to Plaintiff's Motion to Dismiss criminal  
21 charges which Plaintiff submitted to the criminal court  
22 on or about July, 2004. (*Id.* ¶¶ 15,117.) Plaintiff  
23  
24  
25  
26



## Appendix 19

also alleges that District Attorney Defendants used an inaccurate example of Plaintiff's Internet posting when prosecuting him (*Id.* ¶ 108.)

Because the face of Plaintiff's Complaint fails to allege any cognizable legal theory or factual basis opposing District Attorney Defendants's contention of absolute prosecutorial immunity to all Plaintiff's Section 1983 claims, the Court **GRANTS** District Attorney Defendants' Motion to Dismiss all Section 1983 claims. Plaintiff shall have thirty days from the entry of this order to file an Amended Complaint to properly allege claims, if any, against District Attorney Defendants. Plaintiff's Amended Complaint should allege specific facts as to how the District Attorney Defendants are not entitled to absolute prosecutorial as to Plaintiff's claims against them.

### **II. Motion to Dismiss Plaintiff's Section 1983 Claims against Sheriff Department Defendants**

#### **A. Failure to Allege Sufficient Facts to Support Section Claim Against Sheriff Department Defendants**

## Appendix 20

1 Sheriff Department Defendants Bill Steven, Gene  
2 McManus, Melanie Barry, Robert Barber, Ed Fleshman,  
3 and Jerry Harwood contend that Plaintiff offers no  
4 factual allegations specifying how they deprived  
5 Plaintiff of any of his constitutional rights. Plaintiff's  
6 Opposition alleges no cognizable legal theory or factual  
7 basis opposing Sheriff Department Defendants'  
8 contention. As explained below, the Court finds that  
9 Plaintiff has not alleged sufficient facts to support a §  
10 1983 claim against any of the Sheriff Department  
11 Defendants.

12 To seek relief under 42 U.S.C. § 1983, Plaintiff  
13 must show defendants, acting under the color of state  
14 law, deprived Plaintiff of his constitutional or federal  
15 statutory rights. *See West v. Atkins*, 487 U.S. 42, 48  
16 (1988). A prima facie case under § 1983 requires  
17 allegations showing how individually named defendants  
18 caused or personally participated in causing the alleged  
19 harm. *Arnold v. Int'l Bus. Machines Copr.*, 637 F.2d  
20 1350, 1355 (9th Cir. 1981). "Ordinarily, a pro se  
21 complaint will be liberally construed and will be  
22 dismissed only if it appears 'beyond doubt that the  
23  
24  
25  
26

## Appendix 21

1 plaintiff can prove no set of facts in support of his claim  
2 which would entitle him to relief.' " *Estelle v. Gamble*,  
3 429 U.S. 97, 106 (1976) (quoting *Conley v. Gibson*,  
4 355 U.S. 41, 45-46, (1957)). However, "a liberal  
5 interpretation of a [pro se] civil rights complaint may not  
6 supply essential elements of the claim that were not  
7 initially pled. Vague and conclusory allegations of  
8 official participation in civil rights violations are not  
9 sufficient to withstand a motion to dismiss." *Pena v.*  
10 *Gardner*, 976 F.2d 469, 471 (9th Cir. 1992) (quoting  
11 *Ivey v. Board of Regents of Univ. of Alaska*, 673  
12 F.2d 266, 268 (9th Cir.1982)).

13 Here, Sheriff Department Defendants contend  
14 that Plaintiff alleges no factual allegations specifying  
15 how they deprived Plaintiff of his constitutional rights.  
16 In Plaintiff's Complaint, Plaintiff alleges that Sheriff  
17 Department Defendants chose to take Plaintiff's Internet  
18 posting out of context (Compl. ¶¶ 108, 109), and alleges  
19 generally that there was no probable cause for a warrant  
20 or arrest. (*Id.* ¶ 24.) Because Plaintiff fails to set forth  
21 specific facts establishing a basis for First, Second, or  
22 Fourth Amendment violations by Sheriff Department  
23  
24  
25  
26

## Appendix 22

Defendants, the Court **GRANTS** Sheriff Department Defendants' Motion to Dismiss on all of Plaintiff's Section 1983 claims. Plaintiff shall have thirty days from the entry of this order to file an Amended Complaint to properly allege claims, if any, against Sheriff Department Defendants.<sup>5</sup> Plaintiff's Amended Complaint should allege, with specificity, how each Sheriff Department Defendant's action or inaction deprived him of his constitutional rights.

### **III Motion to Dismiss Claims Against the County of Del Norte**

#### **A. Failure to State a Claim Against the County of Del Norte**

County Defendants contend that Plaintiff fails to state an individual claim against it and that Plaintiff alleges no facts indicating County Defendant had a policy or custom that amounted to deliberate interference with Plaintiff's Constitutional rights. Plaintiff's Opposition alleges no factual basis opposing

---

<sup>5</sup> Because the Court Grants Sheriff Department Defendant's Motion to Dismiss for Failure to Allege Sufficient Facts To Support a § 1983 claim, the Court need not address Sheriff Department Defendant's Motion to Dismiss on the grounds of a Facially Valid Warrant Barring § 1983 Claims or Qualified Immunity.

## Appendix 23

County Defendant's contentions. As explained below, the Court finds that Plaintiff has not alleged facts establishing County Defendants had a policy or custom that amounted to deliberate interference with Plaintiff's Constitutional rights.

Local government officials sued in their official capacities are "persons" under § 1983 in those cases in which a local government would be suable in its own name. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 n. 55 (1978)). "[T]he legislative history of the Civil Rights Act of 1871 compels the conclusion that Congress did intend municipalities and other local government units to be included among those persons to whom § 1983 applies." *Monell*, 436 U.S. at 690. Local governments can be sued for monetary, declaratory, or injunctive relief where such suits arise out of unconstitutional actions that implement or execute a "policy statement, ordinance, or decision officially adopted and promulgated by that body's officers. . . ." *Id.* 690-91. If no official policy exists, "customs and usages" may fulfill this element of a Section 1983 claim against a local government. *Id.* However, "A

## Appendix 24

1 municipality cannot be held liable solely because it  
2 employs a tortfeasor - or, in other words, a municipality  
3 cannot be held liable under § 1983 on a respondeat  
4 superior theory." *Monell*, 436 U.S. at 691. "A local  
5 government may not be sued under § 1983 for an injury  
6 inflicted solely by its employees or agents. Instead, it is  
7 when execution of a government's policy or custom,  
8 whether made by its law-makers or by those whose  
9 edicts or acts may fairly be said to represent official  
10 policy, inflicts the injury that the government as an  
11 entity is responsible under § 1983." *Id.* at 694.

12 "To impose liability on a local governmental  
13 entity for failing to act to preserve constitutional rights,  
14 a section 1983 plaintiff must establish: (1) that he  
15 possessed a constitutional right of which he was  
16 deprived; (2) that the municipality had a policy; (3) that  
17 this policy 'amounts to deliberate indifference' to the  
18 plaintiff's constitutional right; and (4) that the policy is  
19 the 'moving force behind the constitutional violation.'  
20 *Oviatt v. Pearcc*, 954 F.2d 1470, 1474 (9th Cir. 1992)  
21 (Quoting *City of Canton*, 489 U.S. at 389-91).

22  
23  
24  
25  
26



## Appendix 25

1 Here, Plaintiff alleges no facts indicating that  
2 County Defendant has a policy amounting to deliberate  
3 indifference to Plaintiff's Constitutional rights. Because  
4 Plaintiff fails to provide a factual basis of liability for  
5 County Defendant under Section 1983, the Court  
6 **GRANTS** County Defendant's Motion to Dismiss each  
7 of Plaintiff's Section 1983 claims against the County of  
8 Del Norte. Plaintiff shall have thirty days from the entry  
9 of this order to file an Amended Complaint to properly  
10 allege claims, if any, against the County of Del Norte.  
11 Plaintiff's Amended Complaint should proffer facts  
12 sufficient to establish that the County of Del Norte has a  
13 formal policy that amounts to deliberate indifference to  
14 the Plaintiff's constitutional rights, which was the  
15 moving force behind the constitutional violations.

### 16 **IV. Motion to Dismiss All of Plaintiff's State Law Claims Against All Defendants**

#### 17 **A. Failure to Allege Sufficient Facts of 18 Compliance With The California Torts Claim Act**

19 Defendants collectively contend that Plaintiff's  
20 state law tort claims are barred for failure to comply  
21 with the statute of limitations period under the  
22 California Tort Claims Act ("CTCA"). In Plaintiff's  
23  
24  
25  
26

## Appendix 26

1 Opposition, Plaintiff alleges no cognizable legal theory  
2 or sufficient factual basis opposing Defendant's  
3 Contention.

4 The CTCA governs tort claims against public  
5 entities and their officials. *See* Cal. Gov. Code § 810 *et*  
6 *seq.* The CTCA requires any civil complaint for money  
7 or damages must first be timely presented in writing to,  
8 and rejected by, the pertinent public entity. Cal. Gov.  
9 Code §§ 910, 912.4, 912.8, 945.4; *See also Hart v.*  
10 *Alameda County*, 76 Cal. App. 4th 766, 778 (Cal. Ct.  
11 App. 1999). Suits against a public entity or public  
12 employees are governed by the specific statute of  
13 limitations provided in the Government Code, not the  
14 statute of limitations that applies to private defendants.  
15 *Moore v. Twomey*, 120 Cal. App. 4th 910, 913-914  
16 (2004); *Martel v. Antelope Valley Hospital*  
17 *Medical Center*, 67 Cal. App. 4th 978, 981 (Cal. Ct.  
18 App. 1998). Each theory of recovery against the public  
19 entity must have been reflected in a timely claim.  
20 *Munoz v. State of California*, 33 Cal. App. 4th 1767,  
21 1778 (Ct. Cal. App. 1995). In addition, the factual  
22 circumstances set forth in the  
23  
24  
25  
26

## Appendix 27

claim must correspond with the facts alleged in the complaint. *Brownell v. Los Angeles Unified School Dist.*, 4 Cal. App. 4th 787, 793-94 (1992). If a claimant fails to timely file a claim with the public entity, and its claim is consequently rejected by the public entity for that reason, courts are without jurisdiction to hear the claimant's cause of action. *Greyhound Lines, Inc. v. County of Santa Clara*, 187 Cal. App. 3d 480, 487 (1986).

Generally speaking, no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented until a written claim has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board. Cal. Gov. Code, § 945.4; *Ocean Services Corp. v. Ventura Port Dist.*, 15 Cal. App. 4th 1762, 1775 (Ct. Cal. App. 1993). Government Code section 911.2 requires the claim relating to a cause of action for death or for injury to person or to personal property be presented not later than *six months* after the accrual of

## Appendix 28

the cause of action. Cal. Gov. Code § 911.2.<sup>6</sup> Furthermore, Government Code section 945.4, requires presentation of a timely claim as a condition precedent to the commencement of suit against the public entity. Government Code Section 945.6, subdivision (a)(1), requires the commencement of the suit to be no later than six months after written notice of the rejected claim. Cal. Gov. Code § 945.6.

California Government Code section 945.3 provides that the CTCA statute of limitations is tolled for a person charged with a criminal offence and bringing a civil action for money against a peace officer or public entity employing the peace officer based upon conduct of the peace officer relating to the offense for which the accused is charged. Cal. Gov. Code § 945.3. The applicable statute of limitation is tolled for claims

---

<sup>6</sup> The claim presentation requirement serves several purposes: (1) it gives the public entity prompt notice of a claim so it can investigate the strengths and weaknesses of the claim while the evidence is still fresh and the witnesses are available; (2) it affords opportunity for amicable adjustment, thereby avoiding expenditure of public funds in needless litigation; and (3) it informs the public entity of potential liability so it can better prepare for the upcoming fiscal year. *Wadley v. County of Los Angeles*, 205 Cal. App. 2d 668, 670 (Ct. Cal. App. 1962); *Nguyen v. Los Angeles County Harbor/UCLA Medical Center*, 8 Cal. App. 4th 729, 734 (Ct. Cal. App. 1992).

## Appendix 29

1 against peace officers or public entities employing the  
2 peace officers while criminal charges are pending before  
3 a superior court. *Id.* Under this section criminal charges  
4 are “pending” until the date of judgment. *See McAlpine*  
5 *v. Superior Court*, 209 Cal. App. 3d 1, 3 (1989).  
6 However, the applicable statute of limitation is not tolled  
7 while a case is on appeal. Cal. Gov. Code § 945.3.

8 Here, Plaintiff alleges only that, sometime in  
9 2004, he filed a notice of claim entitled “Government  
10 Claim for Damages and Injunctive Relief (Government  
11 Code 910)” that was filed within the six month  
12 limitation period required by CTCA statute. (Compl. ¶  
13 7.) Because Plaintiff has proffered only a conclusory  
14 allegation that he has complied with necessary CTCA  
15 filing requirements, Plaintiff has not alleged sufficient  
16 facts to support his CTCA claim against County  
17 Defendants. For this reason, the Court **GRANTS**  
18 Defendants’ Motion to Dismiss Plaintiff’s state law tort  
19 claims. Plaintiff shall have thirty days from the entry of  
20 this order to file an Amended Complaint to properly  
21 allege his state law tort claims, if any, against the  
22 County Defendants. Plaintiff’s Amended Complaint  
23  
24  
25  
26

## Appendix 30

1 should provide a factual basis for alleging that Plaintiff's  
2 commencement of this civil action was timely under the  
3 pertinent Government Code Sections.

### CONCLUSION

4  
5 For the foregoing reasons, the Court:

6 1. **GRANTS** District Attorney Defendants'  
7 Motion to Dismiss each of Plaintiff's Section 1983  
8 claims;

9 2. **GRANTS** Sheriff Department Defendants'  
10 Motion to Dismiss on all of Plaintiff's Section 1983  
11 claims. Plaintiff shall have thirty days from the entry of  
12 this order to file an Amended Complaint to properly  
13 allege claims, if any, against Sheriff Department  
14 Defendants;

15 3. **GRANTS** County Defendant's Motion to  
16 Dismiss each of Plaintiff's Section 1983 claims against  
17 the County of Del Norte. Plaintiff shall have thirty days  
18 from the entry of this order to file an Amended  
19 Complaint to properly allege claims, if any, against the  
20 County of Del Norte.

21 4. **GRANTS** Defendants' Motion to Dismiss  
22 Plaintiff's state law tort claims. Plaintiff shall have thirty  
23  
24  
25  
26



Appendix 31

days from the entry of this order to file an Amended  
Complaint to properly allege his state law tort claims, if  
any, against the County Defendants.

**IT IS SO ORDERED.**

Dated: June 21, 2007

s/MARTIN J. JENKINS  
UNITED STATES  
DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF  
CALIFORNIA**

**JOHN GIMBEL**  
Plaintiff

**CASE NO. : C070113 MJJ  
ORDER GRANTING  
DEFENDANT'S  
MOTION TO DISMISS**

v

**CRESCENT CITY POLICE DEPARTMENT,  
DANA RENO, DOUGLAS PLANK,  
JAMES HOLT, and FRITZ LUDERMAN,**

Defendants.

---

**INTRODUCTION**

Before the Court is Defendants City of Crescent City, Dana Reno, Douglas Plank, James Holt, and FritzLuderman's (collectively, "City Defendants")<sup>1</sup> Motion to Dismiss Pursuant to

---

<sup>1</sup> In the Complaint, pro se Plaintiff generally refers to the City of Crescent City as "Crescent City Police Department.

## Appendix 33

1 Federal Rule of Civil Procedure 12(b)(6), Motion  
2 for a More Definite Statement Pursuant to Federal  
3 Rule of Civil Procedure 12(e), and Motion to Strike  
4 Pursuant to Federal Rule of Civil Procedure 12(f).<sup>2</sup>  
5 Pro se Plaintiff John Gimbel opposes City  
6 Defendants' motion. For the following reasons, the  
7 Court **GRANTS** City Defendants' Motion to  
8 Dismiss.

### 9 **FACTUAL BACKGROUND**

10 In this civil action Plaintiff seeks monetary  
11 damages from City Defendants under federal and  
12 state causes of action resulting from Plaintiff's  
13 arrest and subsequent prosecution for an Internet  
14 message posted<sup>3</sup> on the Internet Community

---

15  
16 Plaintiff alleges claims against the following list of  
17 Defendants: State of California, Del Norte County Sheriff's  
18 Department, Jerry Harwood, Bill Steven, Gene McManus,  
19 Melanie Barry, Dana Reno, Robert Barber, Ed Fleshman,  
20 Crescent City Police Department, Douglas Plack, Greg  
21 Johnson, James Holt, Caleb Chadwick, Thomas Burke, Del  
22 Norte District Attorney, Darren McElfresh, and Fritz  
23 Iuderman. (Complaint  
24 ("Compl.") at Docket No. 3.)

25  
26  
<sup>2</sup> Docket Nos. 13 and 35.

<sup>3</sup> Pro se Plaintiff's internet posting read,

## Appendix 34

1 Forum for the City of Crescent City. As best as the  
2 Court can discern, the material allegations from  
3 Plaintiff's Complaint are as follows.

4 In this civil action Plaintiff seeks monetary  
5 damages from City Defendants under federal and  
6 state causes of action resulting from Plaintiff's  
7 arrest and subsequent prosecution for an Internet  
8 message posted 3 on the Internet Community  
9 Forum for the City of Crescent City. As best as the  
10 Court can discern, the material allegations from  
11 Plaintiff's Complaint are as follows.

12 On April 8, 2004, the Del Norte County  
13 Sheriff's Department arrested Plaintiff and  
14 removed two computers and two handguns from  
15 the arrest location. (Compl. ¶ 5.) Defendants  
16

---

17 Just got a \$5 parking ticket. The Crescent City piggy-wiggly  
18 that gave it to me left a little over-zealous. That's a drag. I  
19 am hereby deputizing all the citizens of Crescent City to fix  
20 up some of the f\*ck up piggos. Grab those hi-powered deer  
rifles, each and every, and get in groups of 50 and more and  
go breeze away to dust the skull of the policy chief.

21 Make an example of that scum. That should do it for awhile.  
22 However, if any other piggos down at the station give you  
crap on this or get in the way, then blow their skulls off, too.

23 (Compl. Ex. A.)  
24  
25  
26

## Appendix 35

1 charged Plaintiff with violating Cal. Penal Code §  
2 71.<sup>4</sup> (*Id.* ¶ 25.) Plaintiff's criminal jury trial began  
3 on September 26, 2005. (*Id.* ¶ 121.) Following his  
4 conviction, the trial court sentenced Plaintiff on  
5 October 27, 2005. <sup>5</sup> However, on June 17, 2006,  
6 the appellate court overturned Plaintiff's  
7 conviction. (*Id.* ¶¶ 5, 10.)

8 On August 30, 2004, Plaintiff filed a notice  
9 of claim titled "Government Claim For Damages  
10 and Injunctive Relief (Government Code 910)." (*Id.*  
11 Ex. 2.) Plaintiff's government claim against  
12 Defendants alleged the same causes of action  
13 against the same list of Defendants as does  
14 Plaintiff's current Complaint. (*Id.*) Plaintiff alleges  
15 that he filed the claim within the statutory of  
16 limitations period for such a claim. (*Id.* ¶ 7.)  
17 Plaintiff's administrative claim was rejected on  
18  
19

---

20 <sup>4</sup> "Threatening Public Officers and Employees and School  
21 Officials." Cal. Penal Code § 71.

22 <sup>5</sup> See Plaintiff's Exhibit 4, Docket No. 4  
23  
24  
25  
26

## Appendix 36

October 15, 2005. (Declaration of John Vrieze  
("Vrieze Decl.") ¶ 9, Ex. H.)

On January 8, 2007, Plaintiff filed the  
operative complaint now before this Court.  
Plaintiff's Complaint alleges federal claims for relief  
against City Defendants for violation of his rights  
under the First, Second, and Fourth Amendments  
of the United States Constitution. (*Id.* ¶¶ 215, 234,  
236.) Plaintiff's Complaint also alleges state law  
tort causes of action for intentional infliction of  
emotional distress, assault, battery, malicious  
prosecution, trespass, conversion of personal  
property, and false imprisonment. (*Id.* ¶¶ 222, 224,  
,226, 228, 230.) Plaintiff seeks damages of \$1.36  
billion. (*Id.* ¶ 106.)

### LEGAL STANDARD

A motion to dismiss pursuant to Federal  
Rule of Civil Procedure 12(b)(6) tests the legal  
sufficiency of a claim. *Navarro v. Block*, 250 F.3d  
729, 732 (9th Cir. 2001). Because the focus of a  
Rule 12(b)(6) motion is on the legal sufficiency,  
rather than the substantive merits of a claim, the



## Appendix 37

1 Court ordinarily limits its review to the face of the  
2 complaint. See *Van Buskirk v. Cable News*  
3 *Network, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002).  
4 Generally, dismissal is proper only when the  
5 plaintiff has failed to assert a cognizable legal  
6 theory or failed to allege sufficient facts under a  
7 cognizable legal theory. See *SmileCare Dental*  
8 *Group v. Delta Dental Plan of Cal., Inc.*, 88 F.3d  
9 780, 782 (9th Cir. 1996); *Balisteri v. Pacifica Police*  
10 *Dept.*, 901 F.2d 696, 699 (9th Cir. 1988);  
11 *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d  
12 530, 534 (9th Cir. 1984). Further, dismissal is  
13 appropriate only if it appears beyond a doubt that  
14 the plaintiff can prove no set of facts in support of a  
15 claim. See *Abramson v. Brownstein*, 897 F.2d 389,  
16 391 (9th Cir. 1990). In considering a Rule 12(b)(6)  
17 motion, the Court accepts the plaintiff's material  
18 allegations in the complaint as true and construes  
19 them in the light most favorable to the plaintiff. See  
20 *Shwarz v. United States*, 234 F.3d 428, 435 (9th  
21 Cir. 2000).

## Appendix 38

A court may dismiss a complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for the pleading of insufficient facts under an adequate theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 533-34 (9th Cir. 1984). When deciding upon a motion to dismiss pursuant to Rule 12(b)(6), a court must take all of the material allegations in the plaintiff's complaint as true, and construe them in the light most favorable to the plaintiff. *Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). In the context of a motion to dismiss, review is limited to the contents in the complaint. *Allarcom Pay Television, Ltd. v. General Instrument Corp.*, 69 F.3d 381, 385 (9th Cir. 1995). When matters outside the pleading are presented to and accepted by the court, the motion to dismiss is converted into one for summary judgment. However, matters properly presented to the court, such as those attached to the complaint and incorporated within its allegations, may be considered as part of the motion to dismiss. *See Hal Roach Studios, Inc. v.*

## Appendix 39

1 *Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19  
2 (9th Cir. 1989). Where a plaintiff fails to attach to  
3 the complaint documents referred to therein, and  
4 upon which the complaint is premised, a defendant  
5 may attach to the motion to dismiss such  
6 documents in order to show that they do not  
7 support the plaintiff's claim. *See Pacific Gateway*  
8 *Exchange*, 169 F. Supp. 2d at 1164; *Branch v.*  
9 *Tunnell*, 14 F.3d 449, 44 (9th Cir. 1994) (overruled  
10 on other grounds). Thus, the district court may  
11 consider the full texts of documents that the  
12 complaint only quotes in part. *See In re Stay*  
13 *Electronics Sec. Lit.*, 89 F.3d 1399, 1405 n.4  
14 (1996), *cert denied*, 520 U.S. 1103 (1997). This rule  
15 precludes plaintiffs "from surviving a Rule 12(b)(6)  
16 motion by deliberately omitting references to  
17 documents upon which their claims are based."  
18 *Parrino v. FIHP, Inc.*, 146 F.3d 699, 705 (9th Cir.  
19 1998).

### ANALYSIS

#### I. Motion To Dismiss Plaintiffs Section 1983 Claims Against City Defendants

## Appendix 40

### **A. Section 1983 Claims Against the Individual City Defendants**

At the outset, the Court notes that Plaintiff's complaint does not make any specific factual allegations against Dana Reno, Douglas Plank, or James Holt, or Fritz Luderman. The only individual Defendant specifically identified in Plaintiff's Complaint is Douglas Plank. (Compl. ¶¶ 25, 26, 31, 34, 60, 84.) However, Plaintiff fails to allege how these individual Defendants caused or personally participated in causing Plaintiff's alleged harm.

To seek relief under 42 U.S.C. § 1983, Plaintiff must show defendants, acting under the color of state law, deprived Plaintiff of his constitutional or federal statutory rights. See *West v. Atkins*, 487 U.S. 42, 48 (1988). A prima facie case under § 1983 requires allegations showing how individually named defendants caused or personally participated in causing the alleged harm. *Arnold v. Int'l Bus. Machines Corp.*, 637 F.2d 1350, 1355 (9th Cir. 1981). "Ordinarily, a pro se complaint will be liberally construed and will be

## Appendix 41

1 dismissed only if it appears 'beyond doubt that the  
2 plaintiff can prove no set of facts in support of his  
3 claim which would entitle him to relief.' " *Estelle v.*  
4 *Gamble*, 429 U.S. 97, 106 (1976) (quoting *Conley v.*  
5 *Gibson*, 355 U.S. 41, 45-46, (1957)). However, "a  
6 liberal interpretation of a [pro se] civil rights  
7 complaint may not supply essential elements of the  
8 claim that were not initially pled. Vague and  
9 conclusory allegations of official participation in  
10 civil rights violations are not sufficient to withstand  
11 a motion to dismiss." *Pena v. Gardner*, 976 F.2d  
12 469, 471 (9th Cir. 1992) (quoting *Ivey v. Board of*  
13 *Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th  
14 Cir.1982)).

15 Here, Plaintiff proffers that only Defendant  
16 Plank (referred to as "Plack" in Plaintiff's  
17 Complaint), "did or should have known and  
18 understood from the very beginning, of the  
19 extremely visible presence of literary hyperbole"  
20 and that he "knew that the exact content of the so  
21 called threat words would never happen." (Compl.

## Appendix 42

¶¶ 26, 31). Plaintiff's Complaint does not refer to any other City Defendant.

Because Plaintiff has failed to allege how individual City Defendants caused or personally participated in causing Plaintiff's alleged harm, and because Plaintiff's allegation that Defendant Plank knew or should have known that Plaintiff's Internet posting was literary hyperbole and would never happen is insufficient to withstand a Motion to Dismiss, the Court **GRANTS** City Defendants' Motion to Dismiss each of Plaintiff's Section 1983 claims against individual City Defendants Dana Reno, Douglas Plank, James Holt, and Fritz Luderman. Plaintiff shall have thirty days from the entry of this order to file an Amended Complaint to properly allege claims, if any, against the individual City Defendants, Dana Reno, Douglas Plank, James Holt, and Fritz Luderman. Plaintiff's Amended Complaint should allege, with specificity, how each individual City Defendant's action or inaction deprived him of his constitutional rights. The Court



## Appendix 43

1 now turns to Plaintiff's remaining Section 1983  
2 claims against the City of Crescent City.

### 3 **B. First, Second, and Fourth** 4 **Amendment Claims Against the City**

5 The City of Crescent City is the only  
6 remaining City Defendant to Plaintiff's Section  
7 1983 claims. As a municipality, Section 1983 claims  
8 against the City of Crescent City are subject to  
9 special pleading requirements. As discussed below,  
10 Plaintiff's complaint fails to properly state claims  
11 for constitutional violations against the City of  
12 Crescent City.

13 Local government may not be sued under  
14 Section 1983 for a constitutional violation  
15 committed by its employees or agents unless that  
16 violation is pursuant to the execution of an official  
17 policy or custom. *Monell v. Dept. of Social Serv.*,  
18 436 U.S. 658, 694 (1978). A plaintiff may  
19 demonstrate a policy or custom to support  
20 municipal liability in a number of ways. A plaintiff  
21 "may prove that a city employee committed the  
22 alleged constitutional violation pursuant to a  
23  
24  
25  
26

## Appendix 44

1 formal governmental policy or a longstanding  
2 practice or custom which constitutes the standard  
3 operating procedure of the local governmental  
4 entity.” *Gillette v. Delmore*, 979 F.2d 1342, 1346  
5 (9th Cir. 1992) (quoting *Jett v. Dallas Indep. Sch.*  
6 *Dist.*, 491 U.S. 701 (1989)) (internal quotation  
7 omitted). In addition, a plaintiff “may prove that an  
8 official with final policy-making authority ratified a  
9 subordinate’s unconstitutional decision or action  
10 and the basis for it.” *Id.* at 1346-47.

11 Here, Plaintiff’s Complaint fails to allege that  
12 his constitutional injuries resulted from the City of  
13 Crescent City’s “policies, customs, or practices.” In  
14 Plaintiff’s Complaint, Plaintiff alleges only that  
15 there were multiple noted failures across all levels  
16 of government including blatant lies and evidence  
17 coverups. (Compl. ¶ 175.) Because Plaintiff has  
18 failed to sufficiently state a Section 1983 claim  
19 against the City of Crescent City, the Court  
20 **GRANTS** the City Defendants’ Motion to Dismiss  
21 as to Plaintiff’s Section 1983 claims against the City  
22 of Crescent City. Plaintiff shall have thirty days  
23  
24  
25  
26

1 from the entry of this order to file an Amended  
2 Complaint to properly allege claims, if any, against  
3 the City of Crescent City. Plaintiff's Amended  
4 Complaint should proffer facts sufficient to  
5 establish that the City of Crescent City has a formal  
6 policy, or longstanding practice which constitutes  
7 the standard operating procedure of the City, which  
8 was the moving force behind the constitutional  
9 violation. The Court now turns to Plaintiff's  
10 remaining state law tort claims.

11 **II. Motion to Dismiss State Law Tort Causes**  
12 **of Action Against All Defendants**

13 **A. Failure to Allege Sufficient Facts of**  
14 **Compliance With The California Tort**  
15 **Claims Act**

16 Plaintiff's Complaint alleges state law tort  
17 causes of action against City Defendants for  
18 intentional infliction of emotional distress, assault,  
19 battery, malicious prosecution, trespass,  
20 conversion of personal property, and false  
21 imprisonment. (*Id.* ¶¶ 222, 224, 226, 228, 230.)  
22 Plaintiff's Complaint against City Defendants must  
23  
24  
25  
26

## Appendix 46

1 allege sufficient facts that Plaintiff submitted state  
2 law claims within the statutory requirements of the  
3 California Tort Claims Act ("CTCA"). The Court  
4 now examines the legal sufficiency of Plaintiff's  
5 Complaint against the City Defendants for state law  
6 tort claims under CTCA statutory requirements.

7 The CTCA governs tort claims against public  
8 entities and their officials. *See* Cal. Gov. Code § 810  
9 *et seq.* The CTCA requires any civil complaint for  
10 money or damages must first be timely presented  
11 in writing to, and rejected by, the pertinent public  
12 entity. Cal. Gov. Code §§ 910, 912.4, 912.8, 945.4;  
13 *See also Hart v. Alameda County*, 76 Cal. App. 4th  
14 766, 778 (Cal. Ct. App. 1999). Suits against a public  
15 entity or public employees are governed by the  
16 specific statute of limitations provided in the  
17 Government Code, not the statute of limitations  
18 that applies to private defendants.

19 *Moore v. Twomey*, 120 Cal. App. 4th 910, 913-914  
20 (2004); *Martel v. Antelope Valley Hospital*  
21 *Medical Center*, 67 Cal. App. 4th 978, 981 (Cal. Ct.  
22 App. 1998). Each theory of recovery against the  
23  
24  
25  
26

## Appendix 47

1 public entity must have been reflected in a timely  
2 claim. *Munoz v. State of California*, 33 Cal. App.  
3 4th 1767, 1778 (Ct. Cal. App. 1995). In addition, the  
4 factual circumstances set forth in the claim must  
5 correspond with the facts alleged in the complaint.  
6 *Brownell v. Los Angeles Unified School Dist.*, 4  
7 Cal. App. 4th 787, 793-94 (1992). If a claimant fails  
8 to timely file a claim with the public entity, and its  
9 claim is consequently rejected by the public entity  
10 for that reason, courts are without jurisdiction to  
11 hear the claimant's cause of action. *Greyhound*  
12 *Lines, Inc. v. County of Santa Clara*, 187 Cal. App.  
13 3d 480, 487 (1986).

14 Generally speaking, no suit for money or  
15 damages may be brought against a public entity on  
16 a cause of action for which a claim is required to be  
17 presented until a written claim has been presented  
18 to the public entity and has been acted upon by the  
19 board, or has been deemed to have been rejected by  
20 the board. Cal. Gov. Code, § 945.4; *Ocean Services*  
21 *Corp. v. Ventura Port Dist.*, 15 Cal. App. 4th 1762,  
22 1775 (Ct. Cal. App. 1993). Government Code section  
23  
24  
25  
26

## Appendix 48

911.2 requires the claim relating to a cause of action for death or for injury to person or to personal property be presented not later than *six months* after the accrual of the cause of action. Cal. Gov. Code § 911.2. <sup>6</sup> Furthermore, Government Code section 945.4, requires presentation of a timely claim as a condition precedent to the commencement of suit against the public entity. Government Code Section 945.6, subdivision (a)(1), requires the commencement of the suit to be no later than six months after written notice of the rejected claim. Cal. Gov. Code § 945.6.

California Government Code section 945.3 provides that the CTCA statute of limitations is tolled for a person charged with a criminal offence and bringing a civil action for money against a

---

<sup>6</sup> The claim presentation requirement serves several purposes: (1) it gives the public entity prompt notice of a claim so it can investigate the strengths and weaknesses of the claim while the evidence is still fresh and the witnesses are available; (2) it affords opportunity for amicable adjustment, thereby avoiding expenditure of public funds in needless litigation; and (3) it informs the public entity of potential liability so it can better prepare for the upcoming fiscal year. *Wadley v. County of Los Angeles*, 205 Cal. App. 2d 668, 670 (Ct. Cal. App. 1962); *Nguyen v. Los Angeles County Harbor/UCLA Medical Center*, 8 Cal. App. 4th 729, 734 (Ct. Cal. App. 1992).



## Appendix 49

1 peace officer or public entity employing the peace  
2 officer based upon conduct of the peace officer  
3 relating to the offense for which the accused. Cal.  
4 Gov. Code §945.3. The applicable statute of  
5 limitation is tolled for claims against peace officers  
6 or public entities employing the peace officers  
7 while criminal charges are pending before a  
8 superior court. *Id.* Under this section criminal  
9 charges are "pending" until the date of judgment.  
10 *See McAlpine v. Superior Court*, 209 Cal. App. 3d  
11 1, 3 (1989). However, the applicable statute of  
12 limitation is not tolled while a case is on appeal. Cal  
13 .Gov. Code § 945.3.

14 Here, Plaintiff alleges only that, sometime in  
15 2004, he filed a notice of claim entitled  
16 "Government Claim for Damages and Injunctive  
17 Relief (Government Code 910)" that was filed  
18 within the six month limitation period required by  
19 CTCA statute. (Compl. ¶ 7.) Because Plaintiff has  
20 proffered only a conclusory allegation that he has  
21 complied with necessary CTCA filing requirements,  
22 Plaintiff has not alleged sufficient facts to support  
23  
24  
25  
26

## Appendix 50

his CTCA claim against the City Defendants. For this reason, the Court **GRANTS** the City Defendants' Motion to Dismiss Plaintiff's state law tort claims. Plaintiff shall have thirty days from the entry of this order to file an Amended Complaint to properly allege his state law tort claims, if any, against the City Defendants. Plaintiff's Amended Complaint should provide a factual basis for alleging that Plaintiff's commencement of this civil action was timely under the pertinent Government Code Sections.

### CONCLUSION

For the foregoing reasons, the Court:

1. **GRANTS** City Defendants' Motion to Dismiss each of Plaintiff's Section 1983 claims against individual City Defendants Dana Reno, Douglas Plank, James Holt, and Fritz Ruderman. Plaintiff shall have thirty days from the entry of this order to file an Amended Complaint to properly allege claims, if any, against the individual City Defendants, Dana Reno, Douglas Plank, James Holt, and Fritz Luderman;

Appendix 51

1           2. **GRANTS** the City Defendants' Motion to  
2 Dismiss as to Plaintiff's Section 1983 claims against  
3 the City of Crescent City. Plaintiff shall have thirty  
4 days from the entry of this order to file an  
5 Amended Complaint to properly allege claims, if  
6 any, against the City of Crescent City;  
7 and

8           3. **GRANTS** the City Defendants' Motion to  
9 Dismiss Plaintiff's state law tort claims. Plaintiff  
10 shall have thirty days from the entry of this order to  
11 file an Amended Complaint to properly allege his  
12 state law tort claims, if any, against the City  
13 Defendants.<sup>7</sup>

14  
15 **IT IS SO ORDERED.**

16 Dated: June 21, 2007

s/MARTIN J. JENKINS  
UNITED STATES  
DISTRICT JUDGE

17  
18  
19  
20  
21 <sup>7</sup> Because the Court has dismissed Plaintiff's claims against the City  
22 Defendants, the Court does not address Plaintiff's First Amendment Claim  
23 that his Internet Posting was protected speech, and need not address the  
24 City Defendants' Motion to Strike and Motion for a More Definite  
25 Statement.  
26

Appendix 52

Case 3:07-cv-001-MJJ  
Document 51  
Filed 06/22/2007

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF  
CALIFORNIA**

**JOHN GIMBEL**  
Plaintiff,

**CASE NO. : Co70113 MJJ  
ORDER GRANTING  
DEFENDANT'S  
MOTION TO DISMISS**

v.

**STATE OF CALIFORNIA,**  
et al.,

**Defendants**

**INTRODUCTION**

Before the Court is Defendant State of  
California's ("Defendant" or "State") Motion to  
Dismiss pursuant to Federal Rules of Civil  
Procedure 12(b)(1) and 12(b)(6).<sup>1</sup> Pro se Plaintiff

---

<sup>1</sup> Docket No. 31, Plaintiff alleges claims against the following list of Defendants: State of California, Del Norte County Sheriff's Department, Jerry Harwood, Bill Steven, Gene McManus, Melanie Barry, Dana Reno, Robert Barber, Ed Fleshman, Crescent City Police Department, Douglas Plack, Greg Johnson, James Holt, Caleb Chadwick, Thomas Burke, Del Norte District Attorney, Darren McElfresh, and Fritz Luderman.

## Appendix 53

John Gimbel )"Plaintiff" or "Gimbel") opposes Defendant's Motion to Dismiss. For the follwoing reasons, the Court **GRANTS** Defendant's Motion to Dismiss.

### FACTUAL BACKGROUND

In this civil action Plaintiff seeks monetary damages from Defendant under federal and state causes of action resulting from Plaintiff's arrest and subsequent prosecution for an Internet message posted<sup>2</sup> on the Internet Community Forum for the City of Crescent City. As best as the Court can discern, the material allegations from Plaintiff's Complaint are as follows.

---

<sup>2</sup> Pro se Plaintiff's internet posting read,

Just got a \$5 parking ticket. The Crescent City piggy-wiggly that gave it to me left a little over-zealous. That's a drag. I am hereby deputizing all the citizens of Crescent City to fix up some of the f\*ck up piggos. Grab those hi-powered deer rifles, each and every, and get in groups of 50 and more and go breeze away to dust the skull of the police chief.

Make and example of that scum. That should do it for awhile. However, if any other piggos down at the station give you crap on this or get in the way, then blow their skulls off, too.

(Comp. Ex. A.)

## Appendix 54

1 On April 8, 2004, the Del Norte County  
2 Sheriff's Department arrested Plaintiff and  
3 removed two computers and two handguns from  
4 the arrest location. (Compl. parag. 5.) Defendants  
5 charged Plaintiff with violating Cal. Penal Code  
6 sect. 71.<sup>3</sup> (*Id.* parag. 25.) Plaintiff's criminal jury  
7 trial began on September 26, 2005. (*Id.* parag 121.)  
8 Following his conviction, the trial court sentenced  
9 Plaintiff on October 27, 2005.<sup>4</sup> However, on June  
10 17, 2006, the appellate court overturned Plaintiff's  
11 conviction. (*Id.* parags. 5,10.)

12 On August 30, 2004, Plaintiff filed a notice  
13 of claim titled "Government Claim For Damages  
14 and Injunctive Relief (Government Code 910)."  
15 (*Id.* Ex.2.) Plaintiff's government claim against  
16 Defendants alleged the same causes of action  
17 against the same list of of Defendants as does  
18 Plaintiff's current Complaint. (*Id.*) Plaintiff alleges  
19

---

20 <sup>3</sup> "Threatening Public Officers and Employees and School Officials." Cal.  
21 Penal Code sect. 71.

22 <sup>4</sup> See Plaintiff's Exhibit 4, Docket No. 4  
23  
24  
25  
26



## Appendix 55

1 that he filed the claim within the statutory of  
2 limitations period for such a claim. (*Id.* parag. 7.)  
3 Plaintiff's administrative claim was rejected on  
4 October 15, 2005. (Declaration of John Vrieze  
5 ("Vrieze Decl.") parag. 9, Ex. H.)

6 On January 8, 2007, Plaintiff filed the  
7 operative complaint now before this Court.  
8 Plaintiff's Complaint alleges federal claims for relief  
9 against Defendant for violation of his rights under  
10 the First, Second, and Fourth Amendments of the  
11 United States Constitution. (*Id.* parags 215, 234,  
12 236.) Plaintiff's complaint also alleges state law tort  
13 cause of action for intentional infliction of  
14 emotional distress, assault, battery, malicious  
15 prosecution, trespass, conversion of personal  
16 property, and false imprisonment. (*Id.* parags.  
17 222,224,226,228, 230.) Plaintiff seeks damages of  
18 \$1.36 billion. (*Id.* parag. 106.)

### LEGAL STANDARD

#### A. Subject Matter Jurisdiction

21 Federal Rule of Civil Procedure 12(b)(1)  
22 authorizes a party to move to dismiss a claim for  
23  
24  
25  
26

## Appendix 56

1 lack of subject matter jurisdiction. Federal courts  
2 are courts of limited jurisdiction; thus, the Court  
3 presumes lack of jurisdiction, and party seeking to  
4 invoke the court's jurisdiction bears the burden of  
5 proving that subject matter jurisdiction exists. See  
6 *Kokkonin v. Guardian Life Ins. Co.*, 511 U. S. 375,  
7 377 (1994). A party challenging the court's  
8 jurisdiction under Rule 12(b)(1) may do so by  
9 raising either a facial attack or factual attack. See  
10 *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000).

11 A facial attack is one where "the challenger  
12 asserts that the allegation contained in a complaint  
13 are insufficient on their face to invoke federal  
14 jurisdiction." *Safe Air for Everyone v. Meyer*, 373  
15 F.3d 1035, 1039 (9th Cir. 2004). In evaluating a  
16 facial attack to jurisdiction, the Court must accept  
17 the factual allegations in plaintiff's complaint as  
18 true. See *Miranda v. Reno*, 238 F.3d 1156, 1157 n. 1  
19 (9th Cir. 2001). For a factual attack, in contrast, the  
20 Court may consider extrinsic evidence. See *Roberts*  
21 *v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987).  
22 Further, the court does not have to assume the  
23  
24  
25  
26

## Appendix 57

1 truthfulness of the allegations, and may resolve any  
2 factual disputes. See *White*, 227 F.3d at 1242. Thus,  
3 "[o]nce the moving party has converted the motion  
4 to dismiss into a factual motion by presenting  
5 affidavits or evidence properly before the court, the  
6 party opposing the motion must furnish affidavits  
7 or other evidence necessary to satisfy its burden of  
8 establishing subject matter jurisdiction." *Savage v.*  
9 *Glendale Union High Sch.*, 343 F.3d 1036, 1039 n.2  
10 (9th Cir. 2003).

11 In the Ninth Circuit, "[j]urisdictional  
12 dismissals in cases premised on federal-question  
13 jurisdiction are exceptional, and must satisfy the  
14 requirements specific in *Bell v. Hood*, 327, U.S. 678  
15 [ ] (1946)." *Sun Valley Gas., Inc. v. Ernst Enters.*,  
16 711, F.2d 138, 140 (9th Cir. 1983); see *Safe Air for*  
17 *Everyone*, 373 F.3d at 1039. The Bell standard  
18 provides that jurisdictional dismissals are  
19 warranted "where the alleged claim under the  
20 [C]onsitution or federal statute clearly appears to  
21 be immaterial and made solely for the purpose of  
22 obtaining federal jurisdiction or where such a claim

## Appendix 58

is wholly insubstantial and frivolous." 327 U.S. at 682-83. Additionally, the Ninth Circuit has admonished that a "[j]urisdictional finding of genuinely disputed is inappropriate when 'the jurisdictional issue and substantive issues are so intertwined that the question of jurisdiction is dependent on the resolution of factual issue going to the merits' of an action." *Sun Valley*, 711 F.2d at 139. The jurisdictional issue and the substantive issues are intertwined where "a statute provides the basis for both the subject matter jurisdiction of the federal court and plaintiff's substantive claim for relief" *Safe Air for Everyone*, 373 F.3d at 1039 (quoting *Sun Valley*, 711 F.2d at 139).

### **B. Motions to Dismiss**

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of a claim. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Because the focus of a Rule 12(b)(6) motion is on the legal sufficiency, rather than the substantive merits of a claim, the Court ordinarily limits its review to the face of the

## Appendix 59

1 complaint. See *Van Buskirk v. Cable News*  
2 *Network, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002).  
3 Generally, dismissal is proper only when the  
4 plaintiff has failed to assert a cognizable legal  
5 theory or failed to allege sufficient facts under a  
6 cognizable legal theory. See *smileCare Dental*  
7 *Group v. Delta Dental Plan of Cal., Inc.*, 88 F.3d  
8 780, 782 (9th Cir. 1996; *Balisteri v. Pacifica Police*  
9 *Dep't*, 901 F.2d 696, 699 (9th Cir. 1988);  
10 *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d  
11 530, 534 (9th Cir. 1984). Further, dismissal is  
12 appropriate only if it appears beyond a doubt that  
13 the plaintiff can prove no set of facts in support of a  
14 claim. See *Abramson v. Brownstein*, 897 F.2d 389,  
15 391 (9th Cir. 1990). In considering a Rule 12(b)(6)  
16 motion, the Court accepts the plaintiff's material  
17 allegations in the complaint as true and contrues  
18 them in the light most favorable to the plaintiff. See  
19 *Shwarz v. United States*, 234 F.3d 428, 435 (9th  
20 Cir. 2000).

21 A court may dismiss a complaint pursuant to  
22 Federal Rule of Civil Procedure 12(b)(6) for the  
23  
24  
25  
26

## Appendix 60

1 pleading of insufficient facts under an adequate  
2 theory. *Robertson v. Dean Witter Reynolds, Inc.*,  
3 749 F.2d 530, 533-34 (9th Cir. 1984). When  
4 deciding upon a motion to dismiss pursuant to  
5 Rule 12(b)(6), a court must take all of the material  
6 allegations in the plaintiff's complaint as true, and  
7 construe them in the light most favorable to the  
8 plaintiff. *Parks School of Business, Inc. v.*  
9 *Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995).

10 In the context of a motion to dismiss, review  
11 is limited to the contents in the  
12 complaint. *Allarcom Pay Television, Ltd. v.*  
13 *General Instrument Corp.*, 69 F.3d 381, 385 (9th  
14 Cir. 1995). When matters outside the pleading are  
15 presented to and accepted by the court, the motion  
16 to dismiss is converted into one for summary  
17 judgment. However, matters properly presented to  
18 the court, such as those attached to the complaint  
19 and incorporated within its allegations, may be  
20 considered as part of the motion to dismiss. See  
21 *Hal Roach Studios, Inc. v. Richard Feiner & Co.*,  
22 896 F.2d 1542, 1555 n.19 (9th Cir. 1989). Where a  
23  
24  
25  
26



## Appendix 61

1 plaintiff fails to attach to the complaint documents  
2 referred to therein, and upon which the complaint  
3 is premised, a defendant may attach to the motion  
4 to dismiss such documents in order to show that  
5 they do not support the plaintiff's claim. *See Pacific*  
6 *Gateway Exchange*, 169 F. Supp. 2d at 1164;  
7 *Branch v. Tunnell*, 14 F.3d 449, 44 (9th Cir. 1994)  
8 (overruled on other grounds). Thus, the district  
9 court may consider the full texts of documents that  
10 the complaint only quotes in part. *See In re Stay*  
11 *Electronics Sec. Lit.*, 89 F.3d 1399, 1405 n.4 (1996),  
12 cert denied, 520 U.S. 1103 (1997). This rule  
13 precludes plaintiffs "from surviving a Rule 12(b)(6)  
14 motion by deliberately omitting references to  
15 documents upon which their claims are based."  
16 *Parrino v. FHP, Inc.*, 146 F.3d 699, 705 (9th Cir.  
17 1998).

### ANALYSIS

#### A. Subject Matter Jurisdiction.

##### 1. Eleventh Amendment Bar on Federal Court Claims Against State Actors

## Appendix 62

1 Defendant's first argument is that this Court  
2 should dismiss Plaintiff's Complaint for lack of  
3 subject matter jurisdiction. Defendant contends  
4 that the Eleventh Amendment to the United States  
5 Constitution bars federal court claims against the  
6 State of California and its instrumentalities and  
7 agencies, therefore, this Court must dismiss  
8 Plaintiff's claims against the State of California.  
9 In Plaintiff's Opposition, Plaintiff proffers no  
10 cognizable legal theory opposing Defendant's  
11 contention. As explained below, the Court finds  
12 that it does not have subject matter jurisdiction  
13 over Plaintiff's claims against Defendant.

14 The Eleventh Amendment provides that  
15 "[t]he Judicial power of the United States shall not  
16 be construed to extend to any suit in law or equity,  
17 commenced or prosecuted against one of the  
18 United States by Citizens of another State, or by  
19 Citizens or Subjects of any Foreign State." U.S.  
20 Const. amend. XI. Fundamental Eleventh  
21 Amendment doctrine provides that states cannot  
22 be sued in federal court, absent their consent. See  
23  
24  
25  
26

## Appendix 63

1 *Papasan v. Allain*, 478 U.S. 265, 276 (1986). The  
2 Eleventh Amendment prohibits federal courts from  
3 hearing suits brought against a state without the  
4 state's consent. *Brooks v. Sulphur Springs Valley*  
5 *Elec. Co.*, 951 F.2d 1050, 1053 (9th Cir.1991). The  
6 Eleventh Amendment's jurisdictional bar covers  
7 suits "naming state agencies and departments as  
8 defendants, and applies whether the relief sought is  
9 legal or equitable in nature." (*Id.*) The Amendment  
10 thus is a specific constitutional bar against hearing  
11 even federal claims that otherwise would be within  
12 the jurisdiction of the federal courts. *Pennhurst*  
13 *State School & Hosp. v. Halderman*, 465 U.S. 89,  
14 120 (1984). This constitutional bar applies to  
15 pendent claims as well. *Id.*

16 Because Plaintiff's Complaint raises federal  
17 claims and state law claims against the State of  
18 California and the state does not consent to be  
19 sued, the claims are barred by the Eleventh  
20 Amendment. For this reason the court grants  
21 Defendant's motion to dismiss pursuant to Rule  
22 12(b)(1).

23  
24  
25  
26

Appendix 64

**CONCLUSION**

For the foregoing reasons, the Court **GRANTS**  
Defendant's Motion to Dismiss **WITH**  
**PREJUDICE**.<sup>5</sup>

**IT IS SO ORDERED.**

Dated: June 21, 2007      s/MARTIN J. JENKINS  
UNITED STATES  
DISTRICT JUDGE

---

<sup>5</sup> Because the Court finds that it does not have subject matter jurisdiction over Plaintiff's federal or state claims, the Court need not address Defendant's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted.

## Appendix 65

John Gimbel  
225 Brevus St.  
Crescent City, CA  
95531  
707.464.5908  
Appellant/plaintiff  
in pro se

Filed  
Jan. 25, 2008  
Cathy A. Catterson, clerk  
U.S. Court of Appeals

### UNITED STATES COURT OF APPEALS NINTH CIRCUIT

JOHN GIMBEL  
Appellant/Plaintiff,

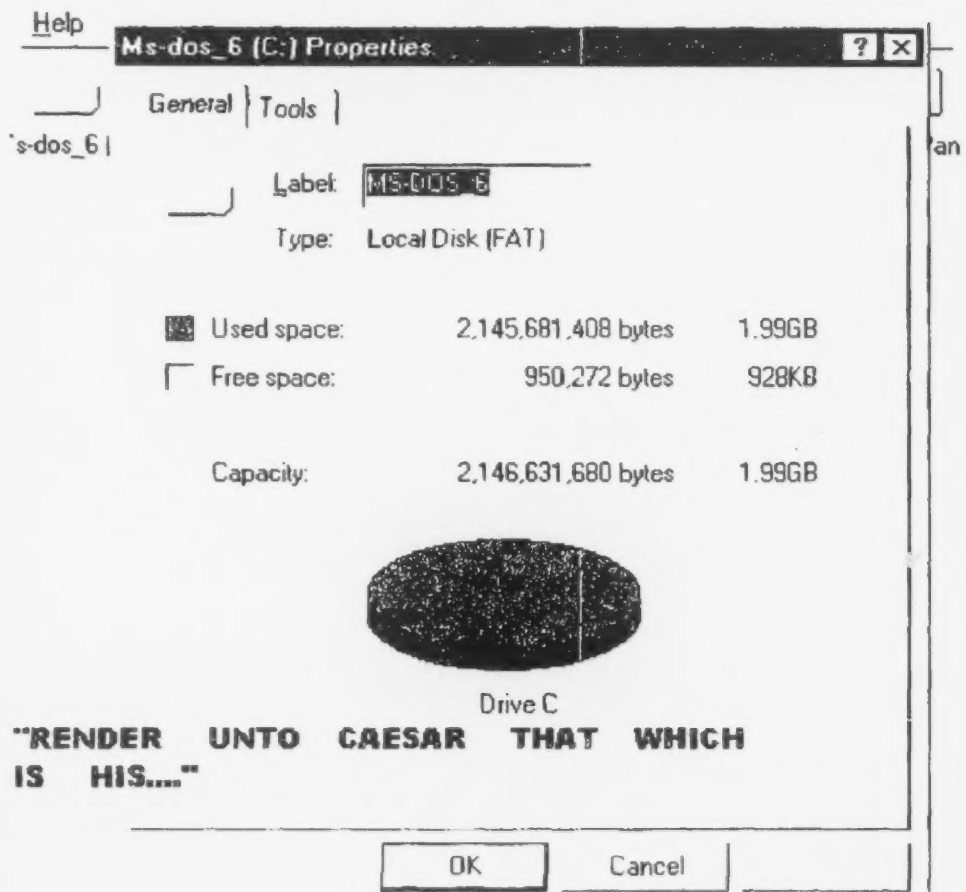
CASE NO. : 07-16966  
(DISTRICT COURT NO.  
C07 0113 MJJ-SBA)  
APPELLANT'S REPLY  
BRIEF TO ALL  
DEFENDANTS

STATE OF CALIFORNIA, DEL NORTE  
COUNTY SHERIFF'S DEPARTMENT,  
JERRY HARWOOD, BILL STEVEN, GENE  
McMANUS, MELANIE BARRY, DANA RENO,  
ROBERT BARBER, ED FLESHMAN,  
CRESCENT CITY  
POLICE DEPARTMENT,  
DOUGLASS PLACK, GREG JOHNSON, JAMES  
HOLT, CALEB CHADWICK, THOMAS  
BURKE, DEL NORTE DISTRICT ATTORNEY,  
KEITH MORRIS, AC FIELD, MICHAEL RIESE,  
DARREN McELFRESH, AND FRITZ  
LUDERMAN

Respondents/Defendants

Appendix 66

**"RENDER UNTO CAESAR THAT  
WHICH IS HIS...."**



...  
Sad case, this county lawyer,  
Mr. Vrieze; he presents nothing more  
to this appeal court than the same

Appellant's Reply Brief to All Defendants 07-16966



## Appendix 67

1 diatribe he used against the 6-page  
2 aspect of the amended complaint in  
3 his motion to dismiss amended  
4 complaint. Identical.

5 Here in my Appellant's Opening  
6 Brief, I have nicely raised dozens of  
7 novel issues conjunct this case of  
8 relative, new-net-yet, first  
9 impression, and he has avoided them  
10 all like the plague.... Please make  
11 stringent note of that.

12 Then throwing the skimpy  
13 Plaintiff's 6 pg. Amended Complaint  
14 into his "Supplemental Record,"  
15 (SER, pgs. 1-6), he (Mr. Vrieze) is  
16 now trying to hide that...THE  
17 PLAINTIFF'S REAL AMENDED  
18 COMPLAINT WAS THE NEAR 2  
19 INCH THICK DECLARATION I  
20 SUBMITTED WITH IT, QUIET  
21 AND SURE DOCUMENTS  
22 THEREIN THAT I HOPED

## Appendix 68

1 REPRESENTED THE CURE.... In it  
2 are 8 authenticated and declared  
3 documents to substantiate and verify  
4 allegations, including trial transcripts  
5 for the speech. For general  
6 reference, same declaration is in ER,  
7 tab 8, where you note docket 53. If I  
8 may suggest same declaration to be  
9 incorporated here as if fully  
10 incorporated herein.... At this point,  
11 may I ask the court's indulgence. The  
12 declaration is thick, and my printer  
13 would be going for a month. Lately,  
14 for every print job on this runt  
15 machine, I've been getting never-  
16 before error messages, and have to  
17 reboot several times throughout a  
18 print job to gain fresh RAM that the  
19 operation seems to need. It could  
20 actually take 2 months going this  
21 way. But let me tear my unhealthy  
22 heart out for this case, before this

23  
24 Appellant's Reply Brief to All Defendants 07-16966  
25  
26

## Appendix 69

1 court, getting over to it somehow,  
2 getting the court its demand should it  
3 be so--should you just hit me with an  
4 e-mail to johngimbel@charter.net  
5 saying you want 15 plus one original  
6 of that declaration (or some stated  
7 number)--I'll do it right away and  
8 nothing else until it's done, serving it  
9 (2 for each or some designated  
10 number) also on all parties. Yes, I  
11 will.

12 ((Just noticing Mr. Ayres for his  
13 defendants did the same thing: threw  
14 the skimpy, 6-pager amended  
15 complaint out there (AER pgs. 11-16)  
16 while obviously trying to hide  
17 completely the immense work-  
18 declaration that was submitted  
19 integral with the 6 pg. amended  
20 complaint.))

21 Gentlemen, I have grieved now  
22 by every second for 4 years straight

23 Appellant's Reply Brief to All Defendants 07-16966  
24  
25  
26

## Appendix 70

1 since they dragged out of my living  
2 room, never to see it again, the  
3 \$6,000 computer mentioned in the  
4 AOB, the only "box" I've ever been  
5 married to (never had a human  
6 spouse). This was my loved one. I'm  
7 58. We were in danger of being  
8 happy.

9       Gentlemen, it is dire; per the  
10 behaviors of this eroding machine, I  
11 am obstructed now from merely  
12 putting down my thoughts in writing.

13       Gentlemen, I am an emergency  
14 ripped out now for nearly 4 years and  
15 starved. I ask this court to relief-it  
16 for me now with the full finding for  
17 plaintiff, (not even to trial, if that's  
18 possible, and I think it is), the same  
19 as summary judgement in the full.  
20 They can appeal it; the money won't  
21 be touched until, if and when it may  
22 become final--a promise--but I need

## Appendix 71

1 to be taken off this cross which has  
2 defaced, extracted, destroyed, mauled  
3 and enslaved involuntarily everything  
4 I ever was or hoped to be....

5 In talking with a constable the  
6 other day who asked me if there were  
7 any diagnoses of this rendition, I told  
8 him I simply knew well I'm long  
9 since some type of what they call an  
10 "internal decapitation," only a kind  
11 invoked by an erosion, conjunct  
12 forced, unwanted, daily-recurring  
13 posturing and cramped, involuntary  
14 writing. Having run across an article  
15 some months ago on such, I saw  
16 myself squarely in it...forced standing  
17 by the years to the slow, extreme  
18 dullard and donkey they married me  
19 to instead, for the final amusement.

20

21

22

23

24

25

26

Appendix 72

Thank you, gentlemen.

Dated: \_\_\_\_\_ s/John Gimbel  
                                  <sup>1</sup>John Gimbel  
                                  Appellant/Plaintiff,  
                                  in pro se

---

<sup>1</sup> With this attestant signatory, I leave myself open to any questions the court may have, answers to be submitted either in writing or orally, upon any matter the court would like some additional answers or focus.

Appellant's Reply Brief to All Defendants 07-16966



## Appendix 73

**John Gimbel**  
**225 Brevus St.**  
**Crescent City CA**  
**95531**  
**707.464.5908**  
**Plaintiff, in pro se**

**ORIGINAL FILED**  
**Feb 21 2008**  
**RICHARD W. WEIKING**  
**CLERK U.S. DISTRICT COURT**  
**NORTHERN DISTRICT OF**  
**CALIFORNIA**

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

**JOHN GIMBEL**  
**Plaintiff**

**CASE NO.: 07-5816 CRB**  
**PLAINTIFF'S COMBINED**  
**OPPOSITIONS TO ALL**  
**DEFENDANTS'**  
**MOTIONS TO DISMISS**  
**COMPLAINT**

**v.**

**FRANK VILLARREAL, DEL NORTE**  
**DISTRICT ATTORNEY, DEL NORTE**  
**SHERIFF'S DEPARTMENT, DEL NORTE**  
**SUPERIOR COURT (FOLLET), UNNAMED**  
**ACCOMPLICE "DOE" TO VILLARREAL,**  
**DEL NORTE COUNTY, STATE OF**  
**CALIFORNIA**

**Defendants**

**Date: March 21, 2008**  
**Time: 10 AM**  
**Courtroom 8, 19th floor**

## Appendix 74

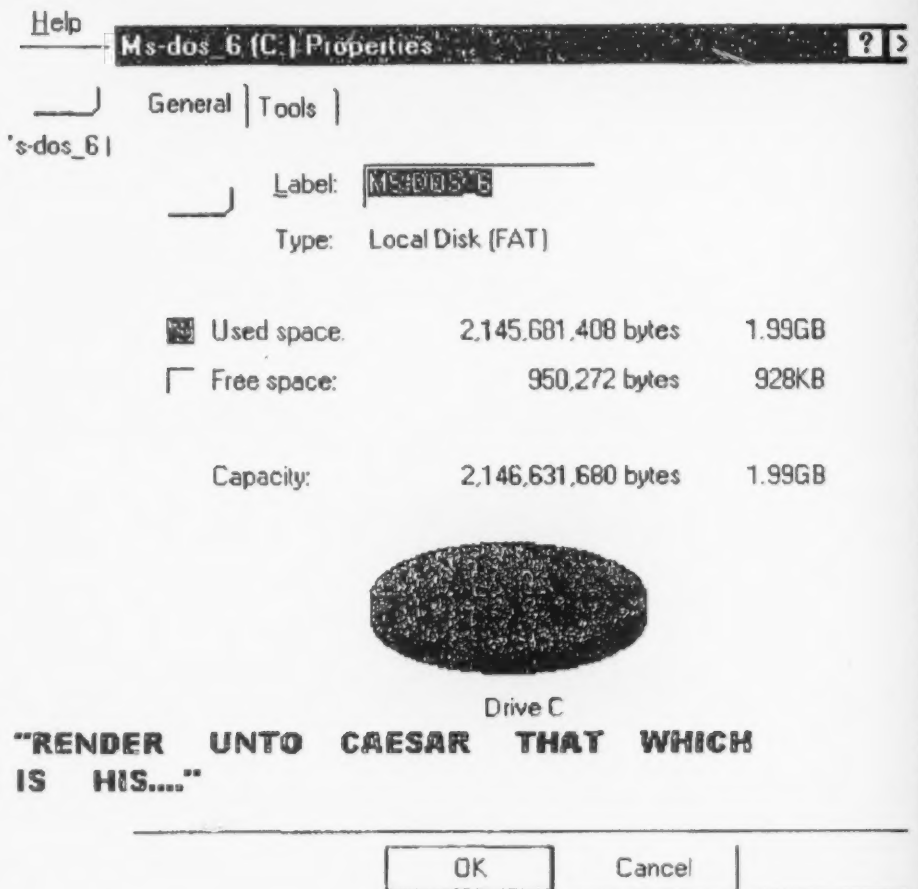
I have run out of machine, all resources (picture, pg. 2). Two score and 8 months ago (near 4 years), an 18 man SWAT team took my life away from me at my front door for protected speech (07 0113 SBA). They have not returned anything, any possessions or any amendments to date. I cannot take from the hand that bit me. This <sup>1</sup>machine (pic, pg. 2) has really denied me all that the net is for 4 years straight. I have suffered upon it as a cross, filling its harddrive to where it can do no more--it crashes at every turn because the drive has been filled with (only) the cases, the burdens of crosses the armed state has put on me for protected speech. It bucks, crashes, every few

---

<sup>1</sup> This machine is mentioned in complaint, paragraphs 79, 114, end para. 299.

## Appendix 75

**"RENDER UNTO CAESAR THAT  
WHICH IS HIS...."**



paragraphs like a donkey bucking over  
those who slaughter him, can go no more.  
The machine in exhibit A was my wife, a

Combined answer to defendants' motions to dismiss cv07-5816 CRB

## Appendix 76

1 \$6,000 machine I have been denied  
2 through 4 years straight. Only this paper  
3 certificate remained with me throughout  
4 the years. I have watched through the  
5 cracks of time's house, and seen a fat state  
6 and defendants, merely that they took her  
7 years ago, ass raping her daily, across the  
8 years, and my soul daily. They do this  
9 also to all the other items they took, never  
10 returned, and all the amendments they  
11 never returned. They have gorged  
12 themselves daily and nightly for years  
13 now, in revel with their booty they took  
14 for protected speech. On the other side of  
15 the wall I "can hear them" but never  
16 touch her or do anything. They are the  
17 Father of Lies to me. "I cannot take from  
18 the hand that bit me" is as valid as anyone  
19 who believes you do not "Bite the hand  
20 that feeds." Think about it; it's correct. To  
21 the courts I have plead formally, only with  
22 this scanty machine-cross, across the

23 Combined answer to defendants' motions to dismiss cv07-5816 CRB  
24  
25  
26

## Appendix 77

1 years, until it's filled now, stacks of formal  
2 briefs near high as a man now. No Feds,  
3 no God has ever intervened in their wild  
4 party against me. I am now  
5 COMPLETELY obstructed from further  
6 writing or merely writing down my  
7 thoughts.

8           Gentlemen, I have grieved now by  
9 every second for 4 years straight since  
10 they dragged out of my living room,  
11 never to see it again, the \$6,000 computer,  
12 exhibit A, the only "box" I've ever been  
13 married to (never had a human spouse).  
14 This was my loved one. I'm 58. We were  
15 in danger of being happy.

16           I have been denied my wife for  
17 centuries now, it feels. The "process" of  
18 seeking restoration before the court is a  
19 sledge hammer blow of enslavement and  
20 denial yet further, feeling a perfect "mal-  
21 linger" of fate every morning for years  
22 now, then all day, as I starve for what I

## Appendix 78

1 once knew. Neither will I start eating food  
2 to replace my grief. This plaintiff waived  
3 food 4 years ago, saying, "God, return my  
4 love at once for this protected speech in  
5 the net case, and make the right amends."  
6 Plaintiff's marrow has been extracted by  
7 these infamous sands of time, destroying,  
8 defacing, mauling him this way....

9 I have been in a deadly chokehold  
10 of deformity and starvation since the day  
11 they emptied my soul for protected  
12 speech. I am now an intense emergency  
13 from this whole thing. While we were  
14 already 2 years of that...came Villarreal....  
15 They are wrong; the complaint tells it  
16 true.

17  
18 Dated \_\_\_\_\_ s/John Gimbel

19 John Gimbel in pro se  
20  
21  
22  
23



## Appendix 79

# EXHIBIT A



ADVANCED

# CYBERWORKS

COMPUTER SYSTEMS • UPGRADES • REPAIRS • SOFTWARE

Enhanced TradeStation Computer System

Designed for John Gimble Exclusively

**AMD XP 2000 MHz CPU = 266 MHz FSB, 512 L2  
CacheMemory MSI KT3 Ultra 2-BR (6380E-060BT)**

**Motherboard**

**w/RAID, Bluetooth Function and USB 2.0 - Chipset:  
KT333+VT8235, FSB: 100/133 MHZ.**

**RAM: 3x DDR: DDR266/333 184-pin Max 3GB, IDE: 2x  
Ultra**

**DMA133/100/66/33 Up to 4 Devices.**

**SLOTS: 5x PCI (32-bit), 1 AGP(AGP 2.0 1x/2x/4x); Ports: 1x  
FDD, 2x COM, 1x LPT, 2x USB 2.0**

**Onboard Audio: ALC650 6-channel audio; Onboard RAID:  
Promise 20276 ATA 133 Onboard Bluetooth: Bluetooth  
connector for Bluetooth module.**

**3x 1024 MB CRUCIAL 32x64 PC 2100 DDR RAM**

**Memory CAS 2 - 1.4MB 3.5 INCH INTERNAL FDD**

**DRIVE-**

**(2) WESTERN DIGITAL 80GB 7200RMP HARD  
DRIVES-**

**"SPECIAL EDITION" 8MB Cache Buffer Ultra 100 8.0**

**Cache Buffer 8.9ms Average Seek Time**

Combined answer to defendants' motions to dismiss cv07-5816 CRB

## Appendix 80

**Lite On 40X12X48 CDRW Specifications:** Recording  
40X(6000KB/sec) Z-CLV (20X, 24@8min, 32X@18min,  
40X@53min) Re-writing 12X High-Speed (1800KB/sec)  
CLV  
Reading 48Xmax (7200KB/sec) CAV (20X~48X) Interface:  
ATAPI-E/IDE, support up to Ultra-DMA Mode2,  
33.3MB/sec Buffer Memory Size: 2MB SMART-BURN  
(TM) technology Under run protection,  
**ATI RADEON 8500 128MB DDR AGP Connect** digital  
camcorder to a PC Digital and analog video capture & editing  
Radio-frequency remote control Stereo TV-tuner TV-ON-  
DEMAND Time shifting Interactive Program Guide DVD  
video playback with Dolby(tm) AC-3 digital audio output.  
**PIONEER INTERNAL ATAPI 16X DVD-ROM 40X CD-**  
**ROM** - 256k buffer 95ms DVD-Rom High-Speed Average  
Access Time 80ms CD-ROM access time. High-Speed  
Average Access Time-95ms DVD-ROM-80 ms CD-ROM.  
Reads single and dual layer DVD-ROM/Video, -R/RW, CD-  
ROM, Audio CDs, CD-R/RW, Video CDs, Photo CDs,  
Hybrid CDs, CD-Extra (CD-Plus) and CD-Texty Discs  
Horizontal or Vertical Mounting Capabilities  
**Antec SC830 Mid Tower Case** - The SX830 has a total of 8  
drive bays including: three 5.24" external bay, two 3.5"  
external bays and three 3.5" internal bays. Dimensions:  
20.6:(H) x 8.1"(W) x 18.6"(D). The SX830 comes with four  
80 mm fans.

Combined answer to defendants' motions to dismiss cv07-5816 CRB

## Appendix 81

### EXHIBIT B

This machine is mentioned multiply in case cv 07 0113 SBA, in exhibit 5 (5 pgs.) attached to complaint.

Across these 4 years, more and more sites give me notice "upgrade your system to access our site pages." Some won't load at all, or to even where I can see this message. Across these 4 years, I've become aware when accessing sites that more and more sites keep adding cookies to gather the max information, and that such buildups are only for *modern* machines; mine can't handle it at all. More and more pages that will load eventually can take anywhere from 30 seconds to even fully 10 minutes--to load one web page. On a modern mach. any of these pages would be instantaneous. As an example, my machine has always typically balked when accessing the Northern District U.S. Court website. As an example of what I've had to do, I'm going to go over now to the main San Fran. District Court website and check the judge's standing order, but time how long

## Appendix 82

it takes. (Across 4 years I've likely accessed information here over 250 times.) I click my bookmark <http://www.cand.uscourts.gov/> and note that it takes 3 minutes, 18 seconds for the page to load sufficiently where I can see the menu under "judges." I mouse down the menu under judge Breyer and click his standing order. 50 seconds to that pg. I click on the 4th one down, "Judge's standing order" and the .pdf, 2 pages, takes 28 seconds to load (note: most pdf files are inaccessible because I only have Acrobat 4; the newer versions of Adobe are not compatible with my system). The pdf loads in my browser. Since the menu is no longer to the left, I have to click the browser backspace to see more of the judge's menu. That takes about 58 seconds to have the menu visible. I then mouse down the menu to judge's "Rulings and examples," and it takes about 50 seconds to load that page. I then mouse down the menu to the left again, now to judge's "Staff." 58 seconds to load that to view. I now go to Breyer's "Current Calendar," and while it does take only about 4

## Appendix 83

seconds to load, the menu to the left disappears. To get back to the judges' menu, I click the browser's back space, and it takes about 52 seconds. I mouse down the judge's menu and click "Judge's Information." This, too, only took about 3 seconds, but the menu to the left disappears, and if I want to check or "re-glance" further any postings by the judge, I have to backspace the browser to the previous page with the judges' menu, and this takes about 55 seconds as I measured it. I will show these timings to anyone.

The above took 9.79 minutes--just these few links.

Now, this federal district site is one of the tougher, but not even atypical of the symptom. I'm not a geek, but I've tried my best to follow what the consumers must know about operation, and I'll bet anyone \$1000 they couldn't tweak or knock any 15 seconds off any of the above timed events on this machine.

## Appendix 84

Even if you figure it up, using, say, that I sought to access, on average, the above information about 100 times across 4 years, (which I believe would be minimum), that's  $9.7 \times 100$ ...computes to ***16.31 hours of just standing waiting for just these few items to load across these 4 years.*** Nearly the cycle of a full day and night *just standing there waiting* for these links to be viewed. That adds up like a knife in the back when you talk extreme bad health, conjunct work and tool. Can you even conceptualize what this takes in the long run from a man and his legal research and obligations through the years, who hasn't even got any health to speak of, going at his legal salvation this way? Or what this tidy little defendant-made arrangement does to your mind? The above timings are, and have been and still are, symptomatic of all attempts to research legal material from the web. Symptomatic of the literal capacity, in EVERYTHING, (and the web), with this machine.



## Appendix 85

I have borne a cross. A nice mean one. Dirtier 'n hell, actually across such lengths, because you must show a patience with such, and for protected speech...such patience I've wondered if even God could ever manifest or own short of dead.

"Think" Windows 3.1. You'd be close. Can anyone tell me if the county gave my wife, "mainframe" all these 4 years that I've been on this runt machine-cross, to their fat-paid county lawyer to use against me...(?) While they spilled my life's savings into the dirt this way, myself paying lawyers elsewhere at times to guide an almost blind-me by this--this being our defendants' "little arrangement" for protected speech"?

Even if their lawyers had only Windows 98 and a fairly minimal hardware, they're on a pedestal, feeling as the merrymaking, benefit and amusement to betray me. The infamous sands from put down....

Appendix 86

ATTN: REFORMATTED TO FIT THE SUPR. COURT  
BOOKLET, INCREASING THE PG. NOS. AND LINES: THUS,  
REFERENCES WITHIN ITSELF TO OTHER LINES  
WITHIN ITSELF MAY NOT LAND ON THE ORIGLLY  
REFERRED-TO PG. AND LINE

John Gimbel  
225 Brevus St.  
Crescent City, CA  
95531  
707.464.5908  
Appellant/plaintiff  
in pro se

RECEIVED  
Cathy A. Catterson, clerk  
U.S. COURT OF APPEALS  
DEC 10 2007  
FILED \_\_\_\_\_  
DOCKETED \_\_\_\_\_  
date initial

UNITED STATES COURT OF APPEALS  
NINTH CIRCUIT

JOHN GIMBEL

Appellant/Plaintiff,

CASE NO. : 07-16966  
(DISTRICT COURT NO.  
C07 0113 MJJ-SBA)  
APPELLANT'S  
OPENING  
BRIEF TO ALL  
DEFENDANTS

v.

STATE OF CALIFORNIA, DEL NORTE  
COUNTY SHERIFF'S DEPARTMENT,  
JERRY HARWOOD, BILL STEVEN, GENE  
McMANUS, MELANIE BARRY, DANA RENO,  
ROBERT BARBER, ED FLESHMAN,  
CRESCENT CITY  
POLICE DEPARTMENT,  
DOUGLASS PLACK, GREG JOHNSON, JAMES  
HOLT, CALEB CHADWICK, THOMAS  
BURKE, DEL NORTE DISTRICT ATTORNEY,  
KEITH MORRIS, AC FIELD, MICHAEL RIESE,

Appellant's Opening Brief

cv 07-16966

## Appendix 87

DARREN McELFRESH, AND FRITZ  
LUDERMAN

Respondents/Defendants

### TABLE OF CONTENTS

<u>Description</u>	<u>Location</u>
Table of contents	.....pg. 1
Jurisdiction, timeliness of appeal.....	.....pg. 2
Introduction, facts of case.....	pg. 3
Relief sought in Dist. Court.....	pg. 4
Claims sought in Dist. Court....	pg. 4
Issues on appeal.....	pg. 12
Supportive memorandum.....	pg. 22
Relief sought in this appeal court.....	.....pg. 24
Notice of whether other cases pending.....	pg. 26
Notice of whether other cases or..... previous cases before this court.....	.....pg. 27

### JURISDICTION

Appellant's Opening Brief

cv 07-16966

## Appendix 88

(Also, timeliness of appeal or  
petition)

Appellant appeals from an order entered in the U.S. District Court, Oakland, Order document 68 in case C07 0113 SBA, filed Sept. 19, 2007 (see appellant's excerpts of record, tab 8). (Appellant's excerpts of record hereafter "ER.")

There have been 2 motions generated since the order ((also, a complaint generated for judicial disability (or misconduct) pertaining to the district court judge, S.B.A.)). They are: a motion to stay appeal proceedings pending outcome of mot. to disqualify in the dist. court...this mot. to stay filed with the Ninth Circuit, served Nov. 15, filed Nov. 20, 2007; and, a complaint for judicial disability, apparently first

## Appendix 89

1 processed about early Nov., 2007, but  
2 initially sent about Sept. 19, 2007--  
3 presently assigned no. 07-89134. An  
4 amended motion to disqualify the  
5 district court judge, filed Nov. 19,  
6 2007, has also been submitted in dist.  
7 court.

8 The foregoing motions and  
9 complaint have not been decided yet.

10 Appellant's notice of appeal is  
11 file stamped Oct. 18, 2007 (ER, tab  
12 9).

13 The District Court docket sheet  
14 provided in a sending with their  
15 clerk's "certificate of record" and  
16 "notice of appeal notification form,"  
17 is attached to the excerpts of record  
18 filed with this brief, at the end of all  
19 excerpts of record as required (ER,  
20 tab 10). There appears to exist no  
21 entry of judgement to date, other than  
22

23

25

26

## Appendix 90

the order (civil docket entry 68, tab 8 in excerpts of record).

This is appellant's first-ever advent into the Ninth Circuit Court of Appeal on any matter.

In this opening brief appellant will elect to structure his presentation, carefully answering as best he can, using the question and answer format in the in pro se brief form, items 1-10. However, all else is an attempt to present a formal opening brief. The form questions are shown under each new title in caps.

### INTRODUCTION

(What are the facts of the case?)

Appellant was arrested on Apr. 8, 2004 (oh four) for speech in an internet forum associated to the site [www. crescentcity95531.com](http://www.crescentcity95531.com). The speech is included here as ER, tab 1



## Appendix 91

1 in the excerpts of record (also,  
2 general reference: it is exhibit A in  
3 orig. complaint). A life he had just  
4 started, effectively trading stocks,  
5 was removed, along with the  
6 expensive custom computer he had  
7 someone build for him for that; also,  
8 all his 2nd amendment items  
9 (handguns) were also removed.  
10 Acquittal was unanimous (3 of 3) by  
11 the CA superior court, appeal  
12 division thereof, after *over 2 years*  
13 being dragged through the court  
14 system, acquittal received June 18,  
15 2006 ((general reference: acquittal  
16 opine is exhibit A in the declaration  
17 filed as docket 53, appropriately  
18 authenticated under civ. local rule 7-  
19 5(a) in that declaration)). All of the  
20 items taken via the warrant are still  
21 missing to date. Appellant has been  
22 consistently afraid now for about 4

## Appendix 92

1 years, in all to do with this case of  
2 speech, to take ANY portion of his  
3 life back or resume any pursuits,  
4 speech or amendment rights until the  
5 defendants are punished from a  
6 posture other than the present one  
7 wherein defendants believe, so far,  
8 they have impunity and immunity for  
9 exactly such ripouts of Gimbel  
10 whenever they "feel like it"--  
11 presently, they would not be deterred  
12 to exactly repeat a murderous and  
13 illegal ripout of Gimbel's life and  
14 pursuits for allowed speech if they  
15 were left to believe in their impunity  
16 and immunity. They would have no  
17 compunctions or conscience and  
18 would continue to do illegal ripouts  
19 for allowed speech whenever they  
20 felt like it, and dragging him further  
21 years through the courts.

## Appendix 93

Under penalty of perjury, appellant states that ER, tab 1, is the official subject speech that was agreed-upon and stipulated to be same, the subject speech exhibit at trial for the subject speech. It was also included as exhibit A attached to the original civil complaint.

### RELIEF THAT WAS SOUGHT AT THE DISTRICT COURT

((What did you ask the district court to do? ( e.g., award damages? injunctive relief? etc.))

Request to the court for award of damages and injury were shown and calculated in paragraphs 50-106 in the original complaint, and that is 1,360 million dollars. On May 22, 2007 all defendants' attorneys were duly notified that amount would increase by 10 million dollars for every day forward that plaintiff's

## Appendix 94

possessions were not returned to him  
with the recompense.

### CLAIMS IN THE DISTRICT COURT

((State the claims (and allegations)  
you raised at the district court.))

These claims are for damages,  
loss and injury for: Violation of First  
Amendment; Violation of Second  
Amendment; Battery; Assault; False  
Arrest; Malicious Prosecution; Illegal  
Warrants; Violations of 42 USC  
Section 1983; Intentional Infliction of  
Emotional Distress; Damage to  
Personal Property; Conversion of  
Personal Property and Lost Income;  
Invasion of Privacy; Trespass.

It's not going to change any  
amount of the real damages, but  
plaintiff/appellant is willing to  
address the foregoing, for the most

## Appendix 95

1 part, as a collateral, consolidated 42  
2 USC 1983 action, involving First and  
3 Second Amendment violations (with  
4 emphasis on the state-powered  
5 coercion seen as a violative  
6 "assault and battery," and the extreme  
7 trauma of such lengthy, year over  
8 year exposure to an illegal-acting  
9 state, as "IIED")--involving severe  
10 lengths and exposure to same.

11 Outstanding additionally to the  
12 foregoing hugely, lengthy exposure  
13 to violations, claimant showed and  
14 exposed the defendants  
15 EXTREMELY THOROUGHLY  
16 across all his complaint, amended  
17 complaint, briefs, declarations,  
18 exhibits and requests for jud. notice,  
19 in two matters: 1. the pretended  
20 victim of the subject speech, the chief  
21 of police of Crescent City, admitted  
22 at trial, on the stand, (Sept. 26, 2005)



## Appendix 96

1 in 3 clear instances (ER, tab 2, boxed  
2 area, ea. pg.) that *the wording itself of*  
3 *the subject speech would never*  
4 *happen*. Yet, the courts and system  
5 continued to drag decrepit Gimbel  
6 forward through the courts for almost  
7 a year after that, continuously  
8 deprived further, until acquittal came  
9 mid June, 2006 as I've said.

10 Gimbel also showed and  
11 exposed the defendants in the  
12 following: 2. The agent for the  
13 district attorney who asked for a  
14 warrant in and about Apr. 5, 2004 for  
15 the subject speech deliberately  
16 attempted to mislead the judge about  
17 the posting by leaving out part of the  
18 posting, an emoticon smiling smiley  
19 with sunglasses, and thereby hid part  
20 of the posting from the judge. The  
21 full details are worked up hugely in  
22 all claimant's writing to the case, all



## Appendix 97

1 dockets that be his submissions.  
2 Plaintiff/appellant has mentioned and  
3 re-focused the material here in these  
4 ? items so many times in those near-  
5 thousands pages it is likely he will  
6 miss enumerating them all:

7 For a general reference:

8 Item 1, in before the previous  
9 paragraph, appears in: In original  
10 complaint, docket 1: para 25, 172;  
11 also, in exhibit D attached to orig.  
12 complaint. It appears in original  
13 Plaintiff's Opposition to Dismiss,  
14 docket 36, and it's mentioned and  
15 submitted as evidence in about 11  
16 instances in those 15 pgs.; a bit long  
17 to list here. It appears in plaintiff's  
18 docket 39, req. for jud. notice, pg. 2,  
19 line 1. Also, in docket 43, plaintiff's  
20 opposition to city defendants' 2nd  
21 motion to dismiss, pg. 6, line 4; pg. 7,  
22 line 20; pg. 17, line 2; pg. 17, line 23.

## Appendix 98

1 There are likely other places plaintiff  
2 has discussed it. The whole damn  
3 case needs to be reviewed *in the first*  
4 *place*.

5 For a general reference:

6 Item 2 in the paragraph before  
7 the previous appears in: Amended  
8 complaint, docket 52, pg. 4, lines 1-7.

9 It appears in plaintiff's Combined  
10 Oppositions...to Motions to Dism.

11 Amended Complaint...,docket 62, pg.

12 6, lines 15-18. It appears in the decl.

13 filed with amended complaint, docket

14 63, pg. 2, item 3. It appears in

15 plaintiff's opposition to county

16 motion to dismiss. original complaint,

17 docket 36, pgs. beginning with line 9,

18 discussion forth. Further showing of

19 this cover up of the evidence in Item

20 2 by other agencies, sheriff, d.a., also

21 appears in the original complaint,

22 docket 1, paragraphs 108, 109. It

## Appendix 99

1 appears also in exhibit E attached to  
2 original complaint, docket 1, and is  
3 document ("doc") 4 within exh. E.  
4 I've undoubtedly overlooked a few  
5 other places it appears. The full  
6 affidavit for warrant, showing the  
7 deliberate hiding of part of the  
8 posting, expression, (the emoticon) is  
9 shown the court in docket 53, a  
10 declaration to certify official papers,  
11 submitted with amended complaint,  
12 being exhibit B attached to that  
13 declaration.

14       Note that in places shown above  
15 where Items 1 and 2 appear in  
16 plaintiff's dockets, discussion on the  
17 items within the briefs, answers, etc.,  
18 may continue well past the mark  
19 indicated--or actually start a bit prior  
20 to the mark indicated.

21

22

23

24 Appellant's Opening Brief

cv 07-16966

25

26

## Appendix 100

Further unacceptable violations of the First Amendment I showed the district court:

((Before proceeding, let me backtrack and fill in the detail, that, as a matter of record, the charge of CA pc 71 with which Gimbel was dragged through trial for years for the subject speech, alleged solely the police chief, Douglass Plack, as "the victim" (ER, tab 5; see heavy line around "Count 1"; see another heavy line-box therein around "Plack...etc."; the pc 415 charge was dropped at pretrial noting the website automatically screened out un-asterisked profanity). Keep in mind, too, that Plack confesses he was the *sole initiator of the charges against the speech*, (ER, tab 6), which meant, therefore, he was *the reason* the charges would continue to deprive

## Appendix 101

1 claimant for years and years before  
2 acquittal came. He therefore also  
3 demanded the sheriff arrest me. He  
4 therefore was the one who kept the  
5 charges running for years, and now  
6 near a half decade of denial floated  
7 against me.)).

8  
9 Now, keeping in mind that I just  
10 showed you that he confessed in a  
11 way that he knew all along *the*  
12 *expressed words as painted would*  
13 *never happen...* (ER, tab 2)...

14 ...In addition to being the above  
15 initiator (pol. chief) of all the  
16 charges, where we PROVED that HE  
17 KNEW, by his own testimony, (ER,  
18 tab 2), the expression, a portrait of  
19 words under the First Amendment,  
20 would never happen, this man also  
21 made other damning confessions at  
22 trial which I pointed out in the



## Appendix 102

1 claims, allegations and briefs, which  
2 should have this court hoppingly  
3 wrathful to slam such usurpation of  
4 speech to full recompense--  
5 usurpation for this cop's personal  
6 aggrandizement and direct lying,  
7 wrought by nothing less than the  
8 state's and county's armadas against  
9 the spindly, decrepit claimant.

10 ANOTHER SUCH confession  
11 by this police chief, showing willful,  
12 deliberate and cognizant thrust by  
13 this hi-powered cop to condemn  
14 protected speech, at the expense to  
15 claimant of untold suffering, unfurled  
16 when he additionally admitted  
17 bluntly at trial Crescent City has not  
18 had, *does not have* any \$5 parking  
19 ticket. (ER, tab 3).

20 AND YET FURTHER:  
21 "Gimbel has not gotten any parking  
22

23

24

25

26



## Appendix 103

1 tickets." (ER, tab 7, <sup>1</sup>hand-pagination  
2 at bottom center, pg. no. 1).

3 Claimant showed the district  
4 court this reeks of a state powered  
5 cop-run criminal enterprise for sport  
6 and self-aggrandizement, against any  
7 form of speech, which this  
8 claimant/appellant has suffered now  
9 for nearly 4 years, for nothing more  
10 than calling a cop an idiot in the spirit  
11 of caustic political hyperbole. This  
12 reeks of criminal-styled activity  
13 against the First Amendment, as if for  
14 sport, and by persons under color of  
15 law no less!

16 Put it together, appeal court.  
17 Blatant, willful, deliberate ignore of  
18 the First. There's YET more to nail  
19 this guy:

20

21 <sup>1</sup> All pagination in all excerpts will be by hand, bottom  
22 center, black marking pen.

23

24 Appellant's Opening Brief

cv 07-16966

25

26

26

Appendix 104

1           AND       ON       TOP       OF  
2   THAT...HERE'S   WHAT   MORE:

3   Here we have him further lying about  
4   what the post actually says:

5           Here we looked at, (and hoped  
6   the dist. court would read the stuff we  
7   handed them), that his imagination is  
8   run off, and that he IS NOT  
9   READING THE POST AT ALL  
10   except to insert the lie to confuse the  
11   court, the lie he prefers to pretend:  
12   He specifically states at one point in  
13   the trial, pg. 51 of trial transcripts,  
14   "Because I don't know if he did not  
15   get a \$5 parking ticket years ago...."  
16   (ER, tab 7, hand-paginated pg. 2,  
17   boxed in area). But the questioner  
18   catches him in total disarray, lie, and  
19   his attempt to co-opt his lie to the  
20   court moments later, in a cross  
21   examination on pg. 56 of the trial  
22   transcripts (ER, tab 4), when he asks

## Appendix 105

1 Plack, "But you {said you} didn't  
2 know if he'd gotten one some time in  
3 the past; isn't that correct, sir? (Ans:  
4 "Yes, sir.") Next Q: "This {post}  
5 says--JUST says--'got a \$5 ticket.' So  
6 this person is claiming 'I JUST got  
7 one'; right?" (Ans: "Yes.") Q: "And  
8 you understood that when you read  
9 it?" (Ans: "Yes.")

10 TO APPEAL COURT on the  
11 preceding: Here's where the man lies  
12 blatantly against the First  
13 Amendment. 1. He pretends he's  
14 taking the post literally which gives  
15 him so called authority, power to go  
16 out and remove someone's life. 2. But  
17 then he's saying "I don't want to see  
18 that Gimbel posted 'Just got a ticket,'  
19 so I'll pretend the posting is saying  
20 Gimbel 'may have got a ticket years  
21 ago' (ER, tab 7,

## Appendix 106

1 hand-paginated no. 2). But, I'll also  
2 play along with these 'fools' in this  
3 courtroom and oppositely 'Ay-say,'  
4 nod and pretend I understand it says  
5 'Just got a ticket...' " (ER, tab 4).  
6 "They're too stupid to sort it, because  
7 I'm here on the trial stand with my  
8 gun in my holster wreaking my  
9 particular brand of coercion." (Plack  
10 took the stand fully armed--appellant  
11 swears this under perjury). 3. But,  
12 additional to the twisting of words  
13 and his own lying and inconsistency,  
14 above, he has admitted since day 1  
15 that Gimbel has not had any parking  
16 tickets since the beginning of 2004,  
17 as far as his system could check (ER  
18 tab 7, hand-paginated no. 1, pertinent  
19 info boxed in thick line; this is pg. 13  
20 of the pol. report for when appellant  
21 was arrested, the entire pg. 13 was  
22 *written by Plack.*)

Appendix 107

1            *TO THIS APPEAL COURT: By*  
2 *all this he's admitting he can't read,*  
3 *can't think, can't understand, is*  
4 *perfectly lying and inconsistent from*  
5 *the beginning, is altering the very*  
6 *words of the subject speech to suit his*  
7 *pretense, and has appointed himself*  
8 *to kill people who merely exercise*  
9 *their right of speech. The cop is lying*  
10 *as to content with the subject speech*  
11 *just so he can murder this claimant*  
12 *with the system. The court is*  
13 *mesmerized by this Satan cop. He*  
14 *lied freely when he pretended he*  
15 *understood "just got a..." when*  
16 *moments before that he pretended the*  
17 *statement said "got one years ago...."*

18            To rehash the above a bit  
19 differently, he's trying to lie to the  
20 court that firstly he's taking it all  
21 "literally" (proved by his initiating  
22 charges and arrest); because, then,



## Appendix 108

1 where the post says, "Just got a \$5  
2 parking ticket" he comes right along  
3 trying to deceive the court by  
4 specifically saying now that means "I  
5 got one years ago." (ER, tab 7, hand-  
6 paginated no. 2). THE POSTING  
7 SAYS NO SUCH THING ABOUT A  
8 TICKET YEARS AGO, TO  
9 ANYONE, OR TO THIS COP  
10 PRETENDING TO TAKE  
11 EVERYTHING LITERALLY. The  
12 "literal" is ostensibly "just got..." and  
13 NOTHING ELSE, CLEARLY. THE  
14 MAN IS INSANE. This cop should  
15 plead insanity in this civil case. He's  
16 unable to read at all. He's essentially  
17 perjuring the content of the posting in  
18 full public view. And the court  
19 should have kicked this chief out on  
20 his ear right there.

21 The speech was doctored by  
22 this Satan cop. He slipped one by and



## Appendix 109

1 mesmerized the jury with his Satan  
2 spell on this one, clearly, and this  
3 appeal court should ANGRILY order  
4 immediate recompense for this  
5 outrage of perjury, deception,  
6 lying, imagining things in the posting  
7 subject speech to suit his self-  
8 aggrandizing sport, and now  
9 consummated half-decade long  
10 denials of a wronged man... this  
11 chief's strange sport, like an  
12 "american-made Bataan residence  
13 march," which he did set against  
14 citizen Gimbel's legitimate First  
15 Amendment, and multiple  
16 amendments, so that he could rob  
17 Gimbel now for nearly 4 years....

18 To demonstrate the foregoing,  
19 that the violation of the First, Second  
20 and no probable cause (4th) exists in  
21 the entire case, now having blown  
22 away a man's life and pursuits for

## Appendix 110

1 nothing, say Bill comes up to a chief  
2 and says, "Joe hit me with his car 5  
3 minutes ago." The chief knows  
4 specifically Joe was with him in his  
5 office the last 4 hours, all morning,  
6 and says, "Joe was exactly with me  
7 the last 4 hours." (Same as I know  
8 Gimbel did not get a ticket recently;  
9 ER, tab 7, hand-paginated no. 1).

10 Is the chief going to start  
11 thinking anywhere that Bill MEANS  
12 "Joe hit me 1 YEAR AGO with his  
13 car."? Or "4 months ago on New  
14 Year's, 2004"? NO ONE--NO ONE--  
15 would EVER ask or think this. *It's*  
16 *just not part of the speech*, the final  
17 *portrait* of words hung there. Except  
18 this insane cop trying to lie and  
19 beguile the court. The chief's  
20 inserting the totally insane lie he felt  
21 like into the post, lying that it could  
22 even remotely mean Gimbel got a

## Appendix 111

1 parking ticket years ago--this is  
2 insane the same way as the example.

3 The superior court, which  
4 should be a defendant in this case, at  
5 that point didn't trip him up, or catch  
6 his blatant lying on the stand as to  
7 exact content of the posting, as in the  
8 above. Incredibly, this state court in  
9 del norte went merrily forward  
10 further-cuckoo against the claimant,  
11 obviously mesmerized by this Satan  
12 figure of cop self-aggrandizement.

13 Let me try to re-focus the  
14 previous another way for the court:

15 Go to ER, tab 7, hand-paginated  
16 no. 1: Plack writes Gimbel hasn't had  
17 a ticket for all 2004. It says he hasn't  
18 gotten one per his system info for the  
19 last 3-plus months, since the posting  
20 was Apr. 4, 2004, and this report is  
21 being written in and about Apr. 9,  
22 2004.

## Appendix 112

1        Now go to ER, tab 4: Plack  
2 pretends he understands the posting  
3 says, "...JUST got a ticket"--{just  
4 now}.

5        BUT in ER, tab 7, hand-  
6 paginated no. 2, Plack shows us an  
7 insane speculation he has used all  
8 along, and tries to deceive everyone,  
9 and is clearly trying to show us how  
10 he based his evidence for his SWAT  
11 move to take Gimbel's life from him  
12 for near a half decade now, by  
13 saying, "But the posting probably  
14 says got one years ago..." {+ or -  
15 some years or months} ..."so I had to  
16 SWAT Gimbel just to make sure I  
17 crossed him up by basing it on  
18 changing what he really said by 180  
19 degrees." In ER, tab 7, hand-  
20 paginated no. 2, he is clearly saying  
21 "I felt like removing Gimbel's life for  
22 near a half decade because I felt like,

## Appendix 113

1 so I said the posting said something it  
2 did not."

3 1. And how does he figure it  
4 probably says "a year ago," (ER, tab  
5 7, hand-paginated no. 2), or some  
6 length ago, if he *agrees* it says "just  
7 now," ER, tab 4?--more visible proof  
8 of his lying. 2. Above all else, we  
9 catch him *right here* mumbling his  
10 rationale he actually used for a swat-  
11 battery removal of Gimbel's life for  
12 near a half decade now, with his  
13 exact insane utterance, ER, tab 7,  
14 hand-paginated no. 2, more or less,  
15 that Gimbel was *really* saying, "I got  
16 one some years ago, or way back in  
17 the past."

18 Isn't the following exactly the  
19 same?:

20 Man in a forum writes at one  
21 point, "I've got a blue shirt on today.  
22 Cops sure stink, don't they?"



## Appendix 114

1       A chief reads the post, doesn't  
2 like the part of it, says then, "This  
3 guy's *really* saying 'I've got a red shirt  
4 on today'. " ("just got a \$5 parking  
5 ticket..." vs. "got one years ago,"  
6 right?--same thing.)

7       The chief then, insane, his evil  
8 ploy building to get this guy says,  
9 "And you know, there was this  
10 unsolved murder 20 years ago by a  
11 guy who fled with a red shirt on...!"

12       The chief then adds up the  
13 insane "evidence" of his type of  
14 Satanic act, furthering the filthy,  
15 insane 'rationale' of his arrest move  
16 by saying, "And, elementary...this  
17 guy must be free, since he's writing  
18 from some computer. They don't  
19 have computers in jail, so this must  
20 be the guy from 20 years ago still on  
21 the loose! And, by these 2 'facts,  
22 pieces of evidence,' I now have the



## Appendix 115

1 right to SWAT him and take his life  
2 from him for near half a decade."

3 Plack is Satan or Satanic at best.  
4 You see how he twisted "just got a"  
5 to something 180 degree opposite,  
6 else?--pretended to everyone to be  
7 "taking and understanding the actual,  
8 literal statement" at one point, too,  
9 obviously a lie--but twisted it exactly  
10 180 opposite to something else,  
11 which, in reality, was his pretense to  
12 form and begin, to base his actual  
13 (illegal) operations, to suit his  
14 insanity and give him a right to go  
15 out and kill someone...he twisted it  
16 exactly to "got one years ago" in his  
17 filthy, insane brain, ascribing this  
18 twisted insanity as the rational and  
19 right to crucify a man with a SWAT  
20 action, removing all his life,  
21 possessions, pursuits, setting him to  
22

## Appendix 116

1 reviling enslavements, and steadily  
2 and daily for near half a decade now.

3 At best, he combined this filthy  
4 lying with other "pieces of evidence  
5 he knew from the start," such as "the  
6 post as expressed would never  
7 happen," (ER, tab 2) to form his  
8 Satanic base for removing a man's  
9 life and pursuits now for near half a  
10 decade.

11 For this direct lying, perfectly  
12 inconsistent statements, and obvious  
13 insanity by this man, chief Plack,  
14 who initiated all charges and the  
15 arrest of Gimbel which resulted in  
16 multiple amendments (1st, 2nd, 4th)  
17 of this appellant now removed evenly  
18 in combination for near 1/2 decade,  
19 this appeal court should find  
20 immediately, angrily and with wrath,  
21 for appellant in the full amount, and  
22

Appendix 117

1 punish the defendants, too, if  
2 possible. They can appeal it.

3  
4 **ISSUES ON APPEAL**  
5 (What issues are you raising on  
6 appeal?)  
7 **STATEMENT OF TOO-VISIBLE  
8 ERROR BY DISTRICT COURT**

8 Plaintiff used some base  
9 language in his amended complaint,  
10 ((docket entry 52 (filed simultaneous  
11 with entries 53 and 54)) and was  
12 discharged from all right to seek  
13 redress.

14  
15 **THE NEXT APPROXIMATE 7**  
16 **PAGES FORMALLY ARGUES TO**  
17 **SHOW THE ERROR OF THE**  
18 **COURT IN DISCHARGING OR**  
19 **DISMISSING THE CASE BASED**  
20 **ON SOME BASE LANGUAGE IN**  
21 **A BRIEF**

21 You have criminal law, and you  
22 have civil law. If you look at all  
23

## Appendix 118

1 practice of criminal law, were you  
2 able to find an instance in a criminal  
3 indictment where some prosecutor  
4 used profanity, "colorful language,"  
5 where a victim did, where *anyone* in  
6 the chain of the whole process does  
7 that, you will see that *there is no use*  
8 *of disliked language anywhere that*  
9 *negates the criminal charge.* By  
10 extrapolation, as all civil cases are  
11 exactly about *violations*, civil  
12 *violations* are not to be negated,  
13 either. The only thing that will  
14 negate that criminal charge is due  
15 process pertaining to itself:  
16 examination of the evidence, the  
17 actors, resolved, one way or the  
18 other, of itself, by itself. Adjudication  
19 has nothing to do, in the practice of  
20 criminal law, by every obvious and  
21 evident view, with whether some  
22 kind of [fucking] "colorful language"

## Appendix 119

1 was used in and about the  
2 examination of the evidence  
3 pertaining to an indictment. Where it  
4 occurs, it is dealt with separately in  
5 all cases.

6 Now, the reasoning is so  
7 simple, it stinks. All civil law is very,  
8 very—it's almost exactly the same,  
9 as criminal law, and should be....  
10 Because it concerns *violations*.

11 The people who do (civil)  
12 litigation out here, are The People—  
13 themselves. They are plaintiffs—the  
14 same as prosecutors. These are not in  
15 any wise oblivious to when they've  
16 been wronged, and they are there (in  
17 litigation) for what they believe is  
18 usually to be, a strong reason. A  
19 reason every bit as strong as The  
20 People themselves, when The People  
21 go for it as the prosecution in some  
22 district attorney's office. We are



## Appendix 120

1 *thinking* people, the same as those  
2 people in there purported to be: I am  
3 a plaintiff, therefore I am a  
4 prosecutor, and because I am an  
5 individual among The People. I am  
6 one of them.

7 Further, any redress that occurs  
8 in a civil case is a punishment.  
9 There's no question about it. It is a  
10 sanction, a punishment exactly the  
11 same; a punishment of exactly the  
12 same severity as the removal of  
13 freedom in criminal case  
14 punishments. Civil case redress  
15 mandates the removal of one's  
16 financial empire, structure, the  
17 removal of one's familial structure  
18 occurring in civil litigations; the  
19 seizing of cars and impounding of  
20 property, houses included. Persons  
21 end up paying compensation for their  
22 lifetime; that is all but being



## Appendix 121

1 executed. This is the removal of your  
2 life, the same as going to jail.

3 It makes perfect sense, because  
4 civil law is all about *violation*,  
5 exactly the same as criminal law.

6 Now, given, as I've shown,  
7 reminded, that they don't let  
8 language of any kind interfere with  
9 looking at the (criminal) indictment,  
10 until the indictment is resolved on the  
11 merits of its own evidence, all the  
12 evidence that can be mustered,  
13 examination of its actors and the  
14 argument...that is resolved of itself....  
15 If there's any kind of a language,  
16 "colorful language problem," it's  
17 dealt with separately in all cases. We  
18 are going to do that here, in the civil  
19 case now, too.

20 I was ready for this, were I to  
21 have appeared in person in Oakland  
22 on the earlier Sept. 25, 2007

## Appendix 122

1 appearance scheduled. I had a paper  
2 ready to bring with me, and here it is  
3 (exhibit A attached to this AOB, at  
4 the end). Reading it, I suggest to the  
5 court I was not at all oblivious to how  
6 certified bar attorneys are rather  
7 stifled and herded as to such briefing  
8 mannerisms, and that some of my  
9 briefing may foment good  
10 irksomeness if not certain envy or  
11 "jealousy," *including, I presume,*  
12 *among some judges who come from*  
13 *these ranks of lawyers across time.*

14 By reading it, (exhibit A  
15 attached hereto), so you see—and I'll  
16 stand by what I've written here—that  
17 this civil case must go forth, and the  
18 actors, defendants named, must be  
19 examined for their deeds, whether by  
20 jury trial or summary judgement,  
21 until that case is resolved,  
22 adjudicated on its own evidence, etc.

## Appendix 123

1 The court in C07 0113 SBA has  
2 made 2 very clear mistakes for which  
3 they should amend: 1. You cannot  
4 peremptorily destroy, without my  
5 even entering a plea about it, my  
6 (constitutional) right to seek redress  
7 (accorded in First Amendment) in a  
8 civil case, before this federal court, or  
9 any court. And, 2. Neither can you  
10 concomitantly free actual potential  
11 *violators* of the law as if due process  
12 for their violations suddenly did not  
13 exist, including civil law, in the same  
14 act and breath.

15 I think the Supreme Court's  
16 going to "find you" on some of this,  
17 if you don't start giving me an inch  
18 here and there for the  
19 obvious...thinking men set all  
20 precedent. From my CADs, you see  
21 I'm saying this is a tight case of first  
22 impression, anyway, having much to

## Appendix 124

1 do with the newness yet of speech  
2 vis-a-vis computers, I perceive.

3 As an item of incidental note,  
4 one points out that judge Armstrong  
5 appeared to have issued her entire  
6 review based on having read no more  
7 but the first line of the amended  
8 complaint. This is merely to note had  
9 she read the first lines of plaintiff's  
10 opposition brief in the overall motion  
11 she was "considering" (supposed to  
12 consider but apparently didn't), titled  
13 "Plaintiff's Combined Oppositions to  
14 County Defendants' Amended  
15 Motion to Dismiss and to City  
16 Defendants' Motion to Dismiss  
17 Amended Complaint," docket 62, she  
18 would have discovered plaintiff  
19 significantly striving to ease any  
20 concerns judge Jenkins may own, if  
21 not console him, and to belabor that it  
22 was just a wake up ploy, to aver that

## Appendix 125

1 plaintiff is not racist, and to impart  
2 that plaintiff is suffering beyond  
3 emergencies and other "loud, loud  
4 yelps of extreme pain, and time ever  
5 dragging on in this state." Whether  
6 this would have meant anything to  
7 her is unknown. But overlook it *she*  
8 *obviously did* as she flew off in  
9 vituperation, rather well discarding  
10 her judge's robes, basing this act and  
11 her order/opine on merely the reading  
12 of the first line in amended  
13 complaint--apparently something  
14 judge Armstrong has admitted (ER,  
15 tab 8, Docket 68, pg. 2, line 1, her  
16 "Order" filed Sept. 19, 2007).

17 Also, consider the irony of the  
18 court's grandiose error pertaining to  
19 language: The speech in plaintiff's  
20 amended complaint, and elsewhere,  
21 (which S.B. Armstrong pretended  
22 "issue" with), would be clearly



## Appendix 126

1 protected speech in real life. Aren't  
2 these the very courts that pretended  
3 to accord status of protected speech  
4 to enumerated cases in real life?

5 When it's protected, it's  
6 protected. No enmitous judge,  
7 fantasy-reality-aberrant federal judge  
8 has the "right" to start kicking one's  
9 constitutional-redress rights down the  
10 sewer over speech she simply  
11 disliked--when in fact, it's protected  
12 speech. A victim/plaintiff has come  
13 to her; she has done nothing more  
14 then make him exactly more of a  
15 victim. She *firstly* freed all his  
16 enemies, *then* damned his right to  
17 redress (her act is a constitutional  
18 provision removed under color of  
19 law, and without plea or trial), and  
20 *then further* went against some  
21 speech that would be protected in real  
22 life. That, sir, is ALL INTENT to kill



## Appendix 127

1 by this judge, by making  
2 plaintiff/appellant a victim  
3 FURTHER than the insufferable  
4 victimization he already owns (and  
5 describes) at the hands of the  
6 defendants. They say a lot by her  
7 error: that these very "judges in  
8 courts of objectivity" are usually  
9 more wont to act just like punks, and  
10 to play games with people's lives than  
11 pay attention to real life.

12  
13 **FURTHER JURISPRUDENTIAL**  
14 **ERROR: ALSO AN ISSUE ON**  
15 **APPEAL: DECORUM IS NOT**  
16 **WHY COURTS EXIST;**  
**VIOLATION IS**

17 Firstly, it is true that order in a  
18 courtroom is very much possible in  
19 determining a plaintiff's described  
20 violation, where the prevailing level  
21 of decorum is not violence per se;  
22

## Appendix 128

1 e.g., mere base language in a brief is  
2 not violence in a courtroom.

3 In the case at bar (Gimbel v.  
4 State of CA et al), the plaintiff  
5 claiming himself a victim of violation  
6 has, therefore, per the above, been  
7 dismissed from a right to seek redress  
8 based on "feelings of indecorum" by  
9 the judge (use of base language)  
10 which did not transcend to violence,  
11 or even remotely threaten such.

12 The wield by the judge of such  
13 an act--alone--is a violent act upon,  
14 and *added* upon, an *already-victim*,  
15 and without sufficient base, because a  
16 courtroom CAN examine purported  
17 complaints short of physical  
18 tempestuousness and short of  
19 physical, direct obstructing violence  
20 present. Base language produces no  
21 such physically obstructing premise.

## Appendix 129

1           A snipey judge pretends  
2 decorum in order to murder a fish  
3 from decency, justice and any  
4 constitutional right, over that she  
5 disliked a comment or two. *On top of*  
6 *that*, she went on a rampage freeing  
7 defendants who should be under  
8 criminal as well as civil indictments.  
9 Notice, that because these very kinds  
10 of courts are freely allowing these  
11 criminal defendants to felony-harass  
12 Gimbel for protected speech, they  
13 with-impunity slew Gimbel again  
14 with *another* case over speech, for  
15 speaking merely one time, and the  
16 first time-ever to a certain deputy--  
17 another case back to back with this  
18 one, just recently filed in S.F. district  
19 court ((This new one is: Gimbel v.  
20 State of CA...(dep.) Villarreal...Del  
21 Norte Sheriff...et al), No. C07 5816

### Appendix 130

1 EMC, filed recently in S.F. district  
2 court, about Nov. 15, 2007)).

3 Decorum is not why courts  
4 exists; VIOLATION is: The judge  
5 should stick to certain objectivity  
6 (purported in her oath of office) and  
7 try to sort the VIOLATION the  
8 plaintiff, victim, came to her with.

9 ...Not piss out of her mouth and  
10 make FURTHER victim of him  
11 because she's a dirty little peeve-  
12 behavior (and a "federal" peeve-  
13 behavior no less).

14 Additionally, did the judge even  
15 happen to notice the whopping  
16 declaration certifying important case  
17 documents submitted simultaneously  
18 with amended complaint? Nope, not  
19 mentioned at all in her "order."  
20 Plaintiff nearly killed himself, in  
21 over-the-fringe health preparing it,  
22 scrutinizing what he thought was

## Appendix 131

1 being asked of him to "cure defects"  
2 in his original complaint, and he sent  
3 this declaration with the amended  
4 complaint, at the very same time.  
5 Observe the judge nowhere states  
6 awareness of that declaration (ER,  
7 tab 8). This judge didn't even notice  
8 that truly immense work.

9  
10 AFTERTHOUGHT ON PREVIOUS  
11 ISSUES ON APPEAL:  
12 DEFENDANTS ACTS WERE  
13 ACTUALLY RIFE FOR A  
14 CRIMINAL AND CIVIL ACTION  
15 AGAINST THEM, NOT JUST  
16 CIVIL, TO BEGIN WITH

17 Use of base language...does not  
18 deter any court in this universe from  
19 a criminal prosecution.

20 Additionally, let me square to  
21 you my complaint against the  
22 defendants is

## Appendix 132

1 strictly a criminal thing, via the listen  
2 to "my heart," then a civil thing, too.  
3 For one, it's the way the system  
4 behaves in many able-to-be named  
5 cases (e.g. O.J. Simpson: civil +  
6 criminal indictments; Robert  
7 Blake, "Beretta" TV series, same). As  
8 a courtesy to you I only filed a civil  
9 case, for there appears not to be a  
10 criminal indictment-recourse against  
11 such defendants that I've ever been  
12 aware of. Only the "rabble" out here  
13 is apparently forced to suffer both  
14 criminal and civil cases before some  
15 hoity toity judges and courts.  
16 Agents, deputies for some county or  
17 state, despite blatant criminal acts,  
18 only seem to invite a civil. What's  
19 even more criminal is their utterly  
20 appalling "immunity" snivel which  
21 usually becomes involved. The  
22 criminal violation is there in the



### Appendix 133

1 Gimbel civil case against 18  
2 defendants, and must be followed  
3 through, even if only named or  
4 "processed" in the system as a "civil"  
5 case.

6 To be sure, courts are notorious  
7 for taking huge criminal sanctions  
8 against "the rabble," then civil  
9 additionally.

10 Additionally, you are saying a  
11 court is offended and will not hear a  
12 (certain) case because of base  
13 language. If that is true, (the issue of  
14 offending the judge; aka "the court")  
15 *then all I need to do*, by your  
16 reckoning, next time I, or anyone, (a  
17 very "nifty" little tool and escape  
18 you've manifested), come under some  
19 criminal indictment, is just throw a  
20 little base language out there and a  
21 court will shy from it, close the case.  
22 Viola, pronto, dismissed, after the

## Appendix 134

1 judge merely "read the 1st line."  
2 (SBA's order: "The court need not  
3 look past the first sentence of  
4 Gimbel's 'Amended Complaint' to see  
5 that it is...and should be dismissed.";  
6 ER, tab 8, hand-paginated pg. 2, and  
7 actual pg. 2, of her 3 pg. order,  
8 docket 68.)

9       Were you NOT to dismiss some  
10 hypothetical future indictment against  
11 one, I think one sees one has a pretty  
12 clear           right           to           do  
13 something...(fantasize in here)...if  
14 you don't see what perverse largess  
15 you're creating by essentially  
16 "approving" a truly criminal act by  
17 my defendants-named...that you're  
18 just making them each, and as an  
19 armed gang who were WRONG,  
20 Barabbas-free without any regard to  
21 my suffering their criminality.

## Appendix 135

1        A combinate removal of  
2 multiple amendments across years for  
3 no reason (protected speech), and for  
4 myriad continuous and multiple  
5 speech cases only, and for speech  
6 alleged ONLY to cops, as I was,  
7        coerced to suffer it, is an  
8 OUTSTANDINGLY criminal event,  
9 rest assured. I am all but brain dead  
10 from it; this I know. I felt it intrude  
11 across years and infest me to my  
12 dregs, and extract me. I am unable to  
13 imagine a court that stupid as not to  
14 equate years of wrongful deprivation  
15 of multiple amendments ever  
16 working together, gnawing and  
17 gnashing the soul--as it did and yet  
18 does--equate this to a goddamn exact  
19 criminal act--and from under color of  
20 law, no less!!!

21        In fact, this, per above, is  
22 getting even more ridiculous every

## Appendix 136

1 time I turn around: I'll tell you what:  
2 if any "first ploy" of using base  
3 language doesn't keep me free for  
4 eternity no matter what you, some  
5 court should chance to accuse me of  
6 in some future, (should you persist in  
7 the perverse scuttle of Gimbel's civil  
8 case for same), I'll just tell you I'm  
9 immune--a 2nd ploy--a backup  
10 perverse arrangement. It's clear if one  
11 of these 2 "rights of Satan" don't free  
12 me rather immediately, (should you  
13 persist in the perverse scuttle of  
14 Gimbel's case).....

15 That is, if both of those huge  
16 icons, (base language & immunity),  
17 taken with edifice and rights, being  
18 used to scuttle Gimbel's case now,  
19 fail Gimbel in ridding of, gaining  
20 freedom against some accusers in  
21 some yet-hypothetical future criminal  
22 indictment against himself, I don't see

## Appendix 137

1 you're telling me anything other than  
2 I've got the right to...(fantasize a  
3 military action here).... Hey, I can  
4 play that perverse shit too, with all  
5 the state's toys and hardware.... I  
6 don't see you're telling me anything  
7 other than I've clearly got the right to  
8 smite you with revolution or...if you  
9 design to mess with me further on it.

10 Rest assured, you will have  
11 created it (should you persist in the  
12 insane, perverse scuttle of Gimbel's  
13 case).

14 This court must see its way to  
15 the full recompense.

16 I know I have won this case as a  
17 matter of law. I shall never be  
18 fooled.

19  
20 CONCLUDING, ISSUES ON  
21 APPEAL  
22

23

24

25

26

## Appendix 138

1        Let me conclude on issues to  
2 appeal, by pointing out that the court  
3 clearly stumbled me to a vast  
4 dissertation on the **right** to present  
5 my case using some base language--  
6 saying that my throat gets cut if I use  
7 some. To proceed, prevail on appeal,  
8 or any level, I must stop, fend, and  
9 deal with the huge stumbling stone  
10 just thrown. Given my showing here,  
11 that the district court errs  
12 significantly in factual further  
13 victimization of an original plaintiff  
14 over use of some base language in  
15 briefs, let me observe the writing  
16 effort on appeal could have been put  
17 to much better use discussing the  
18 subject speech further, and really  
19 bringing home that what they did to  
20 me for that speech violates the First  
21 Amendment and very much so the  
22 person. On that, thank goodness I



## Appendix 139

1 padded myself with about every  
2 observation, cite, quote, real-life  
3 event, argument, logic I could think  
4 of across the years, *and most of this,*  
5 *close to all, is really in all of*  
6 *appellant's writings in the civil*  
7 *dockets beginning with the original*  
8 *complaint.* For an original review of  
9 same, of all issues brought up about  
10 the speech, (as I've said, an original  
11 proceeding in dist. court needs to  
12 have ever happened in the first  
13 place), I would direct anyone to,  
14 including an appeal court, to  
15 incorporate here, as if set forth  
16 herein, the entirety of plaintiff's  
17 submissions in the civil docket. Well,  
18 I'm not; I read the rule, but that's  
19 what I would do. Maybe you can  
20 make an intelligent choice on that  
21 one that resurrects some honor to the  
22 First Amendment in this beaten

## Appendix 140

1 down-to-hell story. My life is now  
2 over for 134 words; I guess I never  
3 lived; I guess I didn't want my  
4 pursuits I had formerly chosen;  
5 goodbye, and thank you, Satan;  
6 whatever you say. You've forced me  
7 to say this, as it looms now as reality.

8       The "royalties" my "cop-  
9 publishing agency" (defendants)  
10 made off my blood, hide, and torture  
11 were infamous. It's so ironic. I'll tell  
12 you why: In 1995, after collecting  
13 stanzas of my writing across about 5  
14 years, I ordered published finally in  
15 1999, at the cost of \$8,000 through a  
16 self-publishing firm, 3,000 copies of  
17 my little book (maybe 8,000 word  
18 count or so; uncounted back then;  
19 done on manual typewriter). To date,  
20 not 1 copy ever sold. But the state's  
21 interest in murdering me, royalties,  
22 tithes, and extractions off the hide

## Appendix 141

1 and time of me for 134 words, hiding  
2 the emoticon with it ever and a day,  
3 before all, the subject speech of  
4 this civil case--now it feels like  
5 I've been paying them royalties in  
6 blood, in enslavement, the currency  
7 of weep, gnash, denial, deprivation,  
8 chill, vastly accelerated ill-health,  
9 boredom, torture for a lifetime, life  
10 savings thrown in the dirt chasing  
11 this, refusing yet to eat with Satan in  
12 my face--that was OK--that was just  
13 dandy with anyone around here.  
14 Please get on with the relief sought; I  
15 am an emergency.

16 So you see, I "can generate  
17 royalties" with my writing; but it's  
18 still not for me, only to pay Satan.  
19 The genesis of the word "pig" is a  
20 total understatement and euphemism  
21 in this tale with which appellant now  
22 adverts your appeal court. It's irony,

23  
24  
25  
26

Appendix 142

these "royalties," and the direction they flow, and the fact such "royalties" are illegally coerced by the state, the universe, the gang, all gangs...*and all to come, and have come, from one falsely accused man.*

Thank you, Satan, thank you; pardon me for having thought life might exist somewhere. I didn't mean that now that I've been coerced into your scheme, blind-eyed-working-for-nowhere and nothing, enslavement and system.

WERE ALL THE FOREGOING  
ISSUES TO THE APPEAL COURT  
RAISED IN THE DISTRICT  
COURT?

(Did you present all these issues to  
the district court?)

## Appendix 143

Obviously not. I could not anticipate S.B.A.'s opinion. Additionally, I didn't discover she was a "black person" until after her order.

### SUPPORTIVE MEMORANDUM OF LAW AND CITES OF ISSUES ON APPEAL

(What law supports these issues on appeal?)

Two things:

1. I believe my (formal) arguments just made under issues on appeal are pretty airtight and realistic. I think the court must bow and shun pretenses to have, A., rights to destroy constitutional rights to redress even while, B., freeing a victim/plaintiff's enemies, violators, defendants, who were even acting under color of law!...doing such (A. and B.) over non-violent uses of

## Appendix 144

1 some base language in briefs. I see  
2 such (my formal arguments) as  
3 nighing "a memorandum." Thinking  
4 men built computers; thinking men  
5 set the first precedent when the first  
6 legal case was born; and largely, their  
7 arguments and thinking were the only  
8 reasons for precedents in come-along  
9 new areas of tech and law. Please  
10 seek to find that I be treated some of  
11 that as a thinking human.

12         2. I said in my 3 pg. "RECORD  
13 ON APPEAL; STATEMENT OF  
14 THE EVIDENCE," in item 5 therein,  
15 attached hereto as exhibit B, (which  
16 was sent with the Civ. Appls. Doc.  
17 Sheet., the CADS being the entry just  
18 after "70" in the case docket, left un-  
19 numbered by the court), which was  
20 sent among 4 different submissions  
21 submitted exactly with the Civ.  
22 Appeal Docketing Sheet, (2 sendings



## Appendix 145

1 of these 4 are not shown in the civil  
2 docket)...I said in this document, in  
3 item 5, that I would show 3 real-to-  
4 life reasons that support the issues I  
5 will raise. (Note: since exhibit B is  
6 not mentioned specifically in the civil  
7 docket sheet, though I've been told it  
8 was received, I will attach it as  
9 exhibit B to this AOB, instead of to  
10 the excerpts.)

11 Although I realize none of these  
12 samples has undergone the grip and  
13 decision of a tango through the court,  
14 the one involving U.S. Congressional  
15 Rep. Mr. Jesse Jackson is about up  
16 to muster as "a cite." The whole  
17 world watched him. "Rabble" would  
18 have been arrested under CA 415  
19 ("fight challenge"; AND, profanity)  
20 when he called out a congressman  
21 who told him to shut up. I've seen it  
22 time and again in my life: The cop

## Appendix 146

1 says "*You must take the gentleman's*  
2 *way in resolving your differences;*  
3 *one single fight challenge,*  
4 *anywhere... to do so is a violation of*  
5 *law.*" Is this not the law? And did not  
6 Mr. Jackson break it? Yes. The whole  
7 world saw him do it. Legally, later,  
8 any so called provocation claiming to  
9 have caused the *criminal* utterance,  
10 can only be used to "mitigate"  
11 degrees of the *original crime*. You're  
12 (Jackson) still the one who wanted to  
13 kill, kick and maim, resort to it, over  
14 the event, the "criminal." Yes, the  
15 world, and Calif. saw him do exactly  
16 that. No one stepped forward to arrest  
17 him, depose him, destroy his last 4  
18 years of work, free his enemies to  
19 boot, rub it in his face to enhance  
20 anywhere, on some other plane,  
21 where he might be suffering hugely  
22 as a victim in some other matter...as

## Appendix 147

1 the judge, S.B.A. so cozily ordered to  
2 happen to Gimbel. Nope, it came to  
3 exactly as if nothing happened with  
4 Jackson.

5 And therefore Gimbel's case, in  
6 the face of base language in his  
7 briefs--the whole Gimbel complaint  
8 and briefs, like Mr. Jackson, should  
9 now be just as smooth forward,  
10 remain ontrack, as a case and work,  
11 life on track--should not even  
12 remotely be the S.B.A. exhibit,  
13 order, further victimization of  
14 Gimbel, even while freeing up his  
15 violators...herself to really get  
16 at...bash and kill off that  
17 victim/plaintiff Gimbel.... (I might  
18 think to include a recent Drudge  
19 story, too, about a Saudi gang rape  
20 victim...get this...who was given 200  
21 lashes. Not far off what I felt, by  
22 destroying my life's work AND

## Appendix 148

1 THEN freeing up Satanic-violators  
2 of me on top of that.) Nope, no way.

3 And Gimbel only did some of  
4 the base language part of Jackson's  
5 exhibit, (see Jackson's "string of  
6 profanities" in article) not the rest of  
7 the Jackson exhibit.

8 The 3 real-to-life supportive  
9 samples of these issues are attached  
10 to this AOB as exhibit C (applicable  
11 as "memorandum" in the issues at  
12 hand, and in this case of first  
13 impression, I believe; remember, the  
14 first judicial case that ever existed,  
15 and, largely the same with a case in  
16 any *new* area...is "precedent set by  
17 thinking men," in and about "real  
18 life," and nothing else).

19 One of the other 2 samples in  
20 exhibit C, the one about the U. of  
21 Colorado editor, is , basically, as I  
22 said in "STATEMENT OF THE

## Appendix 149

1 EVIDENCE;...{exhibit B}" further  
2 supportive of the very idea that base  
3 language is not some soulful,  
4 complete drop-dead-of-your-rights-  
5 and-work-thing as S.B.A. has  
6 attempted; but, rather, a thing where  
7 the utterer's life and work goes on,  
8 and should, exactly as before--same  
9 as Mr. Jackson--just like his.  
10 Summation of both of the 2  
11 remaining samples and their  
12 applicability to the issue being  
13 studied is as follows: (from  
14 "STATEMENT OF THE  
15 EVIDENCE;..." filed, tentatively,  
16 (unverifiable) in the court of appeal  
17 on Nov. 1, 2007:

- 18
- 19 • One article is of the recent U. of  
20 Colorado at Ft. Collins, editor  
21 who allowed to use the "F" word  
22 to describe Bush in the  
23 collegiate paper, keeps his job.  
The editor's life goes on, (Bush  
himself has used the "S" word  
publicly during his term, as you  
recall--no repercussions.)

## Appendix 150

Gimbel used some base language, and, in contrast, his life (or his life's work in the civil case) is supposed to drop stone cold dead--all of it.

- The other article is a revealing recent study that shows that, were Armstrong to dismiss on base language, it is the very attempt to destroy some of the very tenuously precious fabric of our lives that prospers our team spirit and morales, and the study will show this could equate to an act to demoralize and de-spiritualize us.

## RELIEF SOUGHT IN THIS APPEAL COURT

Appellant seeks firmly the full recompense sought. Just reverse the district court and see your way to it. They "can appeal it" if they want, of course. Per Injury and Damages calculated in paragraphs 50-106 in the original complaint, that is 1,360 million dollars. On May 22, 2007 all defendants' attorneys were duly notified that amount would increase



## Appendix 151

1 by 10 million dollars for every day  
2 forward that plaintiff's possessions  
3 were not returned to him with the  
4 recompense. Final figure easily  
5 computed at time this is accorded.

6 In one alternative relief, the  
7 appeal court can focus the district  
8 court's error, and remand the entire  
9 case to start from scratch with the  
10 amended complaint (and declaration  
11 and req. for jud. notice filed  
12 simultaneously), and all subsequent  
13 papers, and be heard in an original  
14 proceeding in the district court. There  
15 has, as I've pointed out, (pg. 20, line  
16 25, elsewhere...), been no original  
17 proceeding to date, with a judge who  
18 read exactly 1 single line of  
19 thousands of pages in the district  
20 court, and admitted as much  
21 (admitted in her order: ER, tab 8,  
22 Docket 68, official pg. 2 of that

## Appendix 152

1 order, line 1, her "Order" filed Sept.  
2 19, 2007). This "alternative relief"  
3 makes very specific that there be a  
4 complete start over in the district  
5 court on appellant/plaintiff's amended  
6 complaint with simultaneous  
7 declaration and req. for jud. notice,  
8 and all briefs and motions  
9 subsequent--to be carefully reviewed.  
10 Hell, I had myriad requests out to the  
11 district court to decide some matters  
12 of law and issue in my Combined  
13 Opposition to Motions to Dismiss  
14 Amended Complaint (docket 62,  
15 Aug. 23, 2007) among lots, lots  
16 more. That combined opposition also  
17 had some very compelling info sent  
18 in a simultaneous declaration (docket  
19 63, Aug. 23). What a plaintiff roast  
20 I've been to!

21 As an additional addendum to  
22 any relief granted in the foregoing,  
23

## Appendix 153

1 and very much surrounded with  
2 interest by this appellant, *we ask the*  
3 *Ninth Circuit Appeal Court to hand*  
4 *us their own opinion on the subject*  
5 *speech* in the case (we all realize  
6 appellant can't be tried twice; there  
7 should be nothing stopping this court  
8 from issuing such an "opinion" on the  
9 speech). The district court was asked  
10 to do the same, (general reference:  
11 amended complaint, docket 52, pg. 2,  
12 lines 5-7), but likely never read to  
13 that point. Appellant says it  
14 again...that such opinions could be  
15 counted going forward in this case,  
16 and like "votes" maybe help form up  
17 the case to degrees.... You could be  
18 the beautiful help to any proposed  
19 forward mediation and arbitration by  
20 this. In fact, all in all, and at every  
21 level in a First Amendment-violation  
22 civil case, appellant sees it as

## Appendix 154

1 improper for the court NOT to issue  
2 their thinking on the subject speech  
3 before proceeding with any order or  
4 opinion. This court might seek to  
5 establish a precedent that it is  
6 heretofore required before issuing an  
7 opinion, so that parties can think on it  
8 in terms of where they're going. It  
9 would be just that: a comment by the  
10 issuing court as to what they saw of  
11 its protection, and would never deter  
12 a party from the presently established  
13 stages (motions, further appeals, etc.)  
14 with which a party is empowered to  
15 seek redress.

16  
17 ANOTHER COMPLETELY  
18 SEPARATE CASE, AND FOR  
19 COMPLETELY NEW  
20 VIOLATIONS OF PURE SPEECH,  
21 HAS JUST BEEN INITIATED IN  
22 FEDERAL DISTRICT COURT;  
23 SOME OF THE NAMED  
24 DEFENDANTS IN THIS APPEAL

Appendix 155

1 CASE ARE RE-UPPED,  
2 REPEATING, WITH-IMPUNITY  
3 OFFENDERS IN THAT CASE

4 (Do you have any other cases  
5 pending before this court?)

6 There are no other cases  
7 involving me pending before this  
8 *appeal* court.

9 But oh lordy, they seek to kill  
10 me for breathing and talking, any first  
11 time I do. That was the case with the  
12 subject speech, being the same  
13 subject speech in this case of appeal--  
14 that it was a *first* time Gimbel had  
15 ever (allegedly) spoken to the police  
16 chief.

17 And *that happens to be the*  
18 *exact same thing with A NEW CASE*  
19 *in district court.* This new case is  
20 about Gimbel's speech to a certain  
21 deputy Villarreal's answering  
22 machine on May 21, 2006 ("the  
23 subject speech," for which Gimbel



## Appendix 156

1 was ripped out and put down some  
2 more), and was exactly a first-time  
3 speak to this deputy! It's where  
4 Gimbel says anything at all, even the  
5 first time he EVER spoke to these  
6 defendants, as in both speech cases,  
7 and they come over with all the  
8 state's armor and rip him out for  
9 good. Then he must bear Satan for  
10 the years. You'll never see or feel a  
11 gnash, frustration, put-down, denial,  
12 life-ripout, pursuits-gone,  
13 enslavement without reward, and  
14 weep like such further coercion of me  
15 to Satan's demands, caused, as this  
16 new case. Go read it and weep, at  
17 your convenience, a new complaint  
18 for violations against the first and  
19 2nd amendment, myself again a  
20 plaintiff "and prosecutor," case No.  
21 C07 5816 EMC, Gimbel v. State of  
22 CA,...(dep.) Villarreal...et al, filed in



Appendix 157

1 S.F. district court about Nov. 15,  
2 2007 (hefty, w/ decl. and certified  
3 papers of proof; complaint and decl.  
4 2" thick when nice and flat).

5  
6 PREVIOUS CASES BY  
7 APPELLANT FILED WITH THIS  
8 COURT

8 (Have you filed any previous cases  
9 which have been decided by this  
10 appeal  
11 court?)

12 No.

13  
14 Small note: When appellant was  
15 removed of his <sup>2</sup>\$6,000 computer  
16 near 4 years ago in this subject  
17 speech case, the ransacking cops  
18 overlooked his first, starter computer  
19 over in a garbage sack in the corner.

20  
21 <sup>2</sup> Appellant had owned the brand new \$6,000 machine  
22 for only a year when the defendants cast their Satanic  
23 eyes upon it.

## Appendix 158

1 Thinking (and hoping) earlier he  
2 would never have to use it again,  
3 appellant hauled it out with about  
4 2/3rd's of it's harddrive space at that  
5 time still remaining. Appellant has  
6 filled that drive across about 4 years  
7 to where you see it now (exhibit D,  
8 attached to AOB, 1st pg. therein)  
9 with not one thing other than court  
10 cases to do with this case. He has  
11 been crucified upon this machine that  
12 could not possibly load any cite  
13 software; and, that cannot support  
14 encryption to purchase legal research  
15 online; and, that takes 20 seconds  
16 average to turn a clicked-on page,  
17 same as if and when Googling for  
18 info (exhibit D, 2nd pg.). Some web  
19 pages take as long as 8 minutes or so  
20 to load. With a narrow daily window  
21 because of severe hampering health,  
22 this means "research" via Google or

## Appendix 159

1 other is really only about 30  
2 comprehensible pages *a day*. The  
3 computer crashes in these times,  
4 balking at the used space left, nearly  
5 10 times a day and has to be  
6 restarted. It is not even a computer; it  
7 is barely an electronic typewriter to  
8 begin with, and run out of dire  
9 necessities. Appellant was bombed  
10 back to the caves by defendants.  
11 Appellant was crucified upon this  
12 machine, "tool," for near 4 years  
13 now thanks to these illegal actors  
14 under disguise of law. Appellant was  
15 caused the additional component of a  
16 daily travail, agony, humiliation and  
17 degrading of appellant, ensured for  
18 the next near 4 years to date by  
19 defendants, to suffer on a  
20 mechanical-electronic anachronism.  
21 (General reference: discussion of  
22 extreme machine handicaps and  
23

Appendix 160

hindrances also discussed, among other places, in docket 1, orig. complaint, exhibit 5, document 1 therein. Also mentioned in docket 36, "plaintiff's opposition to attorney Vrieze's motion..." in and around pg. 11, line 18 to about pg. 12, line 17.)

So, lord have mercy if you feel you may be seeing at some point there are any deficiencies in appellant's writing. He has worked at this machine daily for near 4 years straight now, and done exactly everything for his cases he possibly could with it.

---

Gentlemen, please have at it.

Dated

JOHN GIMBEL,  
Appellant/Plaintiff,  
in pro se

Appellant's Opening Brief

cv 07-16966

Appendix 161

**EXHIBIT A**

As to attorneys' contention of claimant appearing "emotionally involved" in his writing ("diatribe"), or "impugning" the court with some language:

Two things:

... I ask this court:

1. How would one convey feeling oneself a victim, best? Especially as an in pro se-ist. A "rant" can do this. Otherwise stated as: the language of "pure objectivity" might fail to.

2. Yes, I understand an in pro se-ist could, and likely would, ultimately, irk a career attorney where he's using "manuevers," wording, the career-ist can't own, so I do make the following concession for my chosen method in my writings which attempt to depict and convey my victimization



## Appendix 162

(in part, having used "diatribes" and other loud language).

I do very much understand the decorum the bar attorneys must follow religiously, and I apologize to the court for any appearance that I'm capitalizing on some "wild differences" in that I'm not a member.

Consequently, I suggest to the court here now that I will succinctly allow that 1 million in "fines" may be levied against me in the case where my full award being sought is exactly met, but not otherwise, and such "fine," appropriation, in the court's discretion, may then be distributed in some way among the opposition attorneys and the court. I must stress I make concession to any fine ONLY in the instance where my full judgement demanded comes to pass. In doing this, I make absolutely no



## Appendix 163

1 concession that any of my writing in  
2 this case is "wrong." It simply isn't and  
3 cannot be proscribed by the U.S.  
4 constitution. I accept such "fine"  
5 merely to acknowledge their humanity,  
6 state, and position they have  
7 assumed, and to which they are  
8 bound, and to show that someone has  
9 given consideration to the boat they're  
10 in, the "game" they play.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

Appendix 164

**EXHIBIT B**

John Gimbel tentatively, owns a  
225 Brevus St. file stamp of Nov. 1, 2007  
Crescent City CA my hard copy returned,  
95531 not stamped  
707.464.5908  
Plaintiff, in pro se

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

JOHN GIMBEL

CASE NO. : C070113 SBA  
**RECORD ON APPEAL;  
STATEMENT OF THE  
EVIDENCE**

vs.

STATE OF CALIFORNIA, DEL NORTE  
COUNTY SHERIFF'S DEPARTMENT,  
JERRY HARWOOD, BILL STEVEN, GENE  
McMANUS, MELANIE BARRY, DANA RENO,  
ROBERT BARBER, ED FLESHMAN,  
CRESCENT CITY  
POLICE DEPARTMENT,  
DOUGLASS PLACK, GREG JOHNSON, JAMES  
HOLT, CALEB CHADWICK, THOMAS  
BURKE, DEL NORTE DISTRICT ATTORNEY,  
KEITH MORRIS, AC FIELD, MICHAEL RIESE,  
DARREN McELFRESH, AND FRITZ  
LUDERMAN

Defendants

Appellant's Opening Brief

cv 07-16966

## Appendix 165

The appeal will be taken by plaintiff, Title 28 II, Rule 10, based on several points, records and evidence, including the following:

1. The court acted improperly wherein judge Saundra B. Armstrong did not recuse herself on the same grounds as did Martin J. Jenkins (both are black).

2. All original papers and exhibits filed in the district court, including original and amended plaintiff's complaint.

3. A certified copy of the docket entries prepared by the district clerk.

4. The evidence exists, clearly, speaks for itself, that, since to nullify the constitutional right to seek redress is the onus and condemnation of a punishment directly upon one, (in this case upon the plaintiff, when the court closed Gimbel's case), the court acts improperly by nullifying the constitutional right of the plaintiff to seek redress with his complaint without the due process involving a right to a trial to determine, as provided by law

## Appendix 166

and rights to speedy jury trials, whether this constitutional right is in fact removable in the name of punishment. It acts improperly, concomitantly, even before that, in not even having allowed a plea on the charges of "colorful language," before mandating *an exact punishment* of deprivation of the aforementioned constitutional right.

5. Instruction will be given the court, as self-evident, that base language occurs at times in the very course of life. The court will be reminded, if not admonished, that no violations per se are dropped in *violative indictments* in the criminal systems, by "courts," no matter who was to use base language in a case there; yet, in the Gimbel case, the court purports right or mandate for some base language to allow to free up automatically the *violative indictments* of 18 defendants accused of serious and pillaging violations in the Gimbel case.

Additionally, three in fact very recent samples will be shown, that the outright

## Appendix 167

1 forgiveness of indicted violations for some base  
2 language, (as the court attempted with Gimbel's  
3 18 defendants), is not at all keeping with the  
4 tenor of life itself, and should not be an act of  
5 our overseeing-of-life courts. These 3 will be:

- 6 1. The recent Jesse Jackson, U.S. Rep.'s  
7 (Illinois) use of profanity during a session  
8 on the House floor, even further "fight  
9 challenging" his opponent directly ("let's  
10 step outside," CA penal 415). That  
11 episode came to "life goes on."

12 Absolutely nothing came of it. According  
13 to our courts here, (the Gimbel sample),  
14 Jackson should have been fired, stopped,  
15 removed of all rights. Gimbel's 4 years of  
16 work was hit with the hammer of one  
17 page of orders, the judge (Armstrong)  
18 saying of his 4 years of work she only  
19 bothered to read the first line, and Gimbel  
20 was suddenly removed like Saddam for  
21 the same language Mr. Jackson used.

## Appendix 168

2. The recent U. of Colorado at Ft. Collins editor who allowed to use the "F" word to describe Bush in the collegiate paper, keeps his job. The editor's life goes on. (Bush himself has used the "S" word publicly during his term, as you recall--no repercussions.) Gimbel used some base language, and, in contrast, his life (or his life's work in the civil case) is supposed to drop stone cold dead--all of it.
3. A revealing recent study that shows that, were Armstrong to dismiss on base language, it is the very attempt to destroy some of the very tenuously precious fabric of our lives that prospers our team spirit and morales, and the study will show this could equate to an act to demoralize and de-spiritualize us.

The appeal argues there has transpired not even remotely the "justice" due this plaintiff.



## Appendix 169

1 Dated \_\_\_\_\_ s/John Gimbel, in pro se

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

Appellant's Opening Brief

cv 07-16966

24

25

26

Appendix 170

**EXHIBIT C**

Published Thursday | August 2, 2007

Lee Terry, Jackson go toe-to-toe on House floor

BY JOSEPH MORTON

WORLD-HERALD BUREAU

• Jackson: Terry was aggressor

WASHINGTON — Nebraska Rep. Lee Terry quickly conceded that his chances of winning a fistfight against Rep. Jesse Jackson Jr. would be "zero."

That assessment was almost put to the test Tuesday night when a heated exchange threatened to turn physical.

It started when Democrat Jackson said, during a contentious floor debate, that Republicans can't be trusted.

Republican Terry responded by telling Jackson to "shut up," then walked over to add that he had found the Illinois lawmaker's comment inappropriate.

Appellant's Opening Brief

cv 07-16966

## Appendix 171

1 Terry said Jackson let loose a profanity-  
2 filled tirade.

3 "I'm not going to turn with my tail  
4 between my legs," Terry said, "so I just stood  
5 there." Then Jackson asked Terry if he'd care to  
6 step outside.

7 Jackson, who could not be reached for  
8 comment, is a martial arts enthusiast. Photos on  
9 his Web site show him clad in a black fighting  
10 outfit, whaling on an opponent. Terry has seen  
11 Jackson showing off his moves in the House  
12 gym and said he believes that Jackson is a black  
13 belt.

14 The Omahan said he "respectfully  
15 declined the request."

16 "I'd have to say my chances were pretty  
17 minimal," Terry said. "I try to keep my sparring  
18 verbal."

19 Eventually, Rep. Steve Rothman, D-N.J.,  
20 stepped in and suggested that the two head to  
21 separate corners to cool off. They did.

22 The argument came out of a dispute over

23

24 Appellant's Opening Brief

cv 07-16966

25

26

## Appendix 172

the process that Democrats are using to push through proposals on children's health insurance. Republicans decided to vent their frustrations Tuesday night by holding up legislation on agriculture spending. The legislation that started it all Wednesday was pushed through by Democrats, and it adds 6 million lower-income children to a popular children's health insurance program.

The House voted 225-204 to pass the bill, which would add \$50 billion to the State Children's Health Insurance Program.

It would slash federal payments to private insurance companies that cover elderly people under Medicare and shift money to doctors and benefits for poor senior citizens. President Bush has threatened to veto it.

Terry said the whole incident was the result of bad timing. The two men talked Wednesday on the floor and made up, he said.

"We're all big boys," Terry said. "We shook hands and said it's all forgotten and

## Appendix 173

1 behind us now."

2 **This report includes material from the**  
3 **Associated Press.**

4 Contact the Omaha World-Herald newsroom

5  
6 **CSU newspaper editor keeps job,**  
7 **admonished for profanity**

8 By Erika Gonzalez, Rocky Mountain News  
9 Originally published 06:01 a.m., October 5,  
2007

10 Updated 06:01 a.m., October 5, 2007

11 FORT COLLINS COLORADO J. David  
12 McSwane, the editor who caused an  
13 uproar for allowing the F-word to run in  
14 Colorado State University's student  
15 newspaper, will keep his job, a student-run  
governing board ruled Thursday night.

16 Instead of dismissing McSwane from his  
17 duties as editor-in-chief of The Rocky  
18 Mountain Collegian, CSU's Board of  
19 Student Communications decided to  
admonish him for publishing a profane  
editorial referring to President Bush.

20 The punishment was one of the least  
21 severe the board could impose. The only  
22 lesser penalty was to dismiss the  
23 allegations against McSwane.

24 Appellant's Opening Brief

cv 07-16966

25

26

## Appendix 174

The decision came after a four-hour, closed-door hearing of the board, which includes three faculty members and six students. CSU College Republicans and others had called for McSwane's firing for publishing the Sept. 21 editorial, which simply read: "Taser this . . . F--- Bush, with the expletive spelled out. The editorial was written in response to an incident at the University of Florida, where a student was shocked with a Taser during a forum featuring U.S. Sen. John Kerry.

The board ruled that by publishing the editorial, McSwane had violated standards it and The Collegian had set, which state that: "Profane and vulgar words are not acceptable for opinion writing."

Although the board said it considered the opinion expressed in the editorial protected by the First Amendment, it also acknowledged the impact the piece has had.

In a letter to McSwane announcing its decision, the board wrote: "The editorial has caused harm to The Collegian, Student Media and the university community. It is our judgment that your decision was unethical and unprofessional."



## Appendix 175

1 McSwane, who canceled a post-hearing  
2 news conference, would not comment on  
3 the decision. He has 20 days to appeal the  
ruling.

4 While the editorial was credited to the  
5 entire Collegian editorial board, McSwane  
6 was held responsible because of his  
7 position with the paper. He has said that he  
approved the piece after hours of debate.

8 "We did not do this to capture headlines,"  
9 McSwane said last week. "We did this to  
10 spark a discussion about free speech."

11 But the editorial ignited a firestorm of  
12 publicity, garnering attention from national  
13 news outlets and conservative talk show  
14 host Rush Limbaugh. The Board of  
15 Student Communications received about  
300 e-mails and about a dozen letters  
complaining about the editorial.

16 Businesses also pulled their advertising in  
17 protest - an action that could end up  
18 costing The Collegian and other student-  
19 run publications \$50,000. Collegian staffers  
20 have taken a 10 percent pay cut as a result  
21 of the fallout and the director of CSU's  
student media said he is looking at further  
cost-cutting measures.

## Appendix 176

The board could have opted to fire, suspend or reprimand McSwane for the editorial.

### **Swearing at work boosts team spirit, morale: research**

Oct 17, 2007 08:58 AM US/Eastern  
Copyright AFP

Breitbart TV

Regular swearing at work can help boost team spirit among staff, allowing them to express better their feelings as well as develop social relationships, according to a study by researchers.

Yehuda Baruch, a professor of management at the University of East Anglia, and graduate Stuart Jenkins studied the use of profanity in the workplace and assessed its implications for managers.

They assessed that swearing would become more common as traditional taboos are broken down, but the key appeared to be knowing when such language was appropriate and when to turn to blind eye.

Appellant's Opening Brief

cv 07-16966

## Appendix 177

1 The pair said swearing in front of senior  
2 staff or customers should be seriously  
3 discouraged or banned, but in other  
4 circumstances it helped foster solidarity  
5 among employees and express frustration,  
6 stress or other feelings.

7 "Employees use swearing on a continuous  
8 basis, but not necessarily in a negative,  
9 abusive manner," said Baruch, who works  
10 in the university's business school in  
11 Norwich.

12 Banning swear words and reprimanding  
13 staff might represent strong leadership, but  
14 could remove key links between staff and  
15 impact on morale and motivation, he said.

16 "We hope that this study will serve not only  
17 to acknowledge the part that swearing plays  
18 in our work and our lives, but also to  
19 indicate that leaders sometimes need to  
20 'think differently' and be open to intriguing  
21 ideas.

22 "Managers need to understand how their  
23 staff feel about swearing. The challenge is  
24 to master the 'art' of knowing when to turn a  
25 blind eye to communication that does not  
26 meet their own standards."

The study, "Swearing at work and  
permissive leadership culture: when anti-

## Appendix 178

social becomes social and incivility is acceptable", is published in the latest issue of the Leadership and Organisational Development Journal.

Copyright AFP 2007, AFP stories and photos shall not be published, broadcast, rewritten for broadcast or publication or redistributed directly or indirectly in any medium

**EXHIBIT D**

**Note: Due to resource limitations, other, I am unable to insert Exhibit D into this Supreme Court reformatting booklet: Description, location of original as follows:**

**The 1st of 2 items in exhibit D was a screenshot of harddrive space at the time of writing, showing 23.8MB of space left. It is available in hardcopy only in the submitted AOB in 07-16966, as it had be deleted for space on my machine, and because subsequent screenshots in Microsoft paint, showing far, far less space becoming available in forward case work, took precedence. The latest preserved screenshot on the machine shows 928KB harddrive**

Appendix 180

space remaining (latest appears in this petit. in Appendix 66).

The 2nd item in exhibit D is a screenshot of RAM system resources: when you right click at My Computer (in Windows 95) > Properties > General Tab > showing system RAM at 32MB.

Though I retain the above screenshot on my machine, due to the resource shortage it refuses simply to load into this reformatting document you now read being presented to the U.S. Supreme court. The screenshot is in the AOB in hard copy in the Ninth cir., in cv 07- 16966 as the second item in exhibit D attached to AOB, showing the machine's entire RAM as 32MB.